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नई दिल्ली, शनिवार, मई 29, 1993/ज्येष्ठ 8, 1915

No. 19]

NEW DELHI, SATURDAY, MAY 29, 1993/JYAISTHA 8, 1915

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली 29 अप्रैल, 1993

आ. अ. 90—निर्वाचन आयोग 39—अहमद नगर
संसदीय निर्वाचन क्षेत्र से लोक सभा के लिए श्री गदाख
यशवंतराव कंकराव के निर्वाचन और 1991 की प्रत्यारोप
अर्जी सं. 1 को प्रस्तुत करते हुए, 1991 की निर्वाचन अर्जी
सं. 2 में सम्बन्धी उच्च न्यायालय औरंगाबाद पीठ के तारीख
30 मार्च, 1993 के निर्णय और आदेश को लोक प्रतिनि-
धित्व अधिनियम, 1951 (1951 का 43) की धारा
106 के अनुसरण में इसके द्वारा प्रकाशित करता है।

[सं. 82/महा.-लो. सं० 2/91 (औरंगाबाद)/93]

आदेश से,

बलवंत सिंह, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 29th April, 1993

O.N. 90.—In pursuance of section 106 of the Representa-
tion of the People Act, 1951 (43 of 1951), the Election
Commission of India hereby publishes the Judgement and
Order dated 30th March, 1993 of the High Court of Judica-

ture at Bombay, Aurangabad Bench, in Election Petition
No. 2 of 1991, calling in question the election of Shri Gadakh
Yashwantrao Kankarrao to the House of the People from
39-Ahmednagar Parliamentary Constituency and in Recrimi-
nation Petition No. 1 of 1991.

[No. 82/MT-HP/2/91 (Aurangabad)/93]

By Order,

BALWANT SINGH, Secy.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ELECTION PETITION No. 2 of 1991

1. E. V. alias Balasaheb Vikhe Patil—Petitioner.

Versus

1. Gadakh Yashwantrao Kankarrao,
2. Ashtekar Pramod Nilkanth,
3. Kate Sudhakar Petras,
4. Godrej Rustum Kermani,
5. Deshmukh Bhagwan Rangnath,
6. Nujan Rambhau Maruti,
7. Popat Baburao Sagade,
8. Raut Eknath Baba,
9. Adv. Rajabhai Zarkar,
10. Shekatkar Ganpat Sakham,
11. Sarode Kishor Dinkar

—Respondent.

Shri S. B. Mhase with Shri V. D. Hon. Advocates—for
Petitioner.

S/Shri V. C. Kotwal with S. B. Talekar, Advs.—for
Respondent No. 1.

S/Shri K. G. Gawali with D. R. Jaybhar, Advs.—for Respondent No. 2.

Shri N. P. Patil, Advocate—for Respondent No. 3.

S/Srri S. B. Athare with S. D. Dhongade, Advocates—for Respondent No. 6.

Shri P. R. Patil, Advocate—for Respondent No. 7.

Shri P. P. Phalake, Advocate with Shri R. K. Patil, Advocate—for Respondent No. 8.

Respondent Nos. 4, 5, 6, 10 and 11 Served.

Shri A. H. Joshi, Advocate—for Witness Shri R. M. Garute.

Shri V. R. Manohar, Advocate General with Shri R. S. Bhosale, Advocate with Shri S. K. Kadam, Advocate—for noticee.

CORAM : A. A. HALBE, J.

Dated, the 30th March, 1993

JUDGEMENT

In a keenly contested election between five times Member of Parliament E. V. alias Balasaheb Vikhe Patil and two times Member of Parliament Gadakh Yashwantrao Kankarrao, the Petitioner Balasaheb Vikhe Patil has filed this election petition with a view to unseat the returned candidate—Gadakh Yashwantrao Kankarrao on the grounds, that the respondent Gadakh committed corrupt practices under Section 123(4) of the Representation of People Act (hereinafter for short 'the R. P. Act') at the election, which took place on 12th June, 1991 and the results of which were declared on 16th June, 1991. Respondent—Gadakh secured 2,79,520 votes, whereas petitioner—Patil secured 2, 67, 883 votes in 39 Ahmednagar Parliamentary Constituency. The grievance of the petitioner is that respondent No. 1 carried out the election propaganda and made statements touching upon the personal character and conduct of the petitioner. They are as follows :

- (1) That the petitioner had set apart the huge sum of Rs. three crores for election;
- (2) that the petitioner had paid Rs. Fifty Lacs to Janata Dal to secure its support;
- (3) that the petitioner had paid Rs. Twenty Lacs to Janata Dal candidate B. G. Kolshe Patil—the former Judge of this High Court, with a view that he should withdraw from the above Parliamentary constituency and contest the Parliamentary elections from Beed constituency ;
- (4) that the petitioner was to take out rally of five thousand cyclists in order to canvass for the election and that these cycles were to be distributed amongst the participants ;
- (5) that the petitioner was to pay Rs. 50,000 to the taluka level workers and Rs. 25,000 to the village level workers to defect from congress and obviously work for him ;
- (6) that the petitioner was to carry out renovation of chawris and temples at various villages in the constituency and that Rs. 5,000 were received for repairs of chawri at Ganganagar area in Newasa taluka ;
- (7) that the petitioner was to distribute dhotis, sarees and also liquor amongst the voters with a view to secure their votes.

2. The petitioner has contended that all this election propaganda was to run down his image amongst the voters. It is further claimed that Sharad Pawar the then Chief Minister also joined him in this election campaign and endorsed the allegations made above by respondent No. 1 in his speeches at Nawasa Baijartal and Srigonda in the same parliamentary constituency. The petitioner has relied on four meetings, wherein according to him, respondent No. 1 has made such statements touching upon his personal character and conduct.

He has further relied on the interview with the reporter—Girish Kulkarni on behalf of Maharashtra Times took place on 10-5-1991 at Circuit House Ahmednagar and the report of which was published in the Maharashtra Times dated 13-5-1991.

3. Sequel to this election petition, respondent No. 1 filed Recrimination Petition 1/1991, alleging that the petitioner should be disqualified, in case he is elected on the corrupt practices committed by him, which I shall come later.

4. During the course of evidence, notice under Section 99 of the R.P. Act was issued to S. G. Pawar, who appeared in response to this notice and made several mentions for discharge of the notice.

5. Now, turning to the contentions in the election petition, the petitioner has stated the petitioner is a citizen of India and is resident of taluka Srirampur, district Ahmednagar. The Petitioner is a registered voter in this constituency. Petitioner and respondent Nos. 1 to 10 contested elections to the parliamentary from 39 Ahmednagar Parliamentary Constituency, which is locally known as "Ahmednagar South Constituency". The date of filing nominations was 19th April, 1991 to 26th April, 1991. The last date of acceptance of nomination papers was 26th April, 1991, the scrutiny and publication of the list of candidates was fixed on 27th April, 1991 and the date of withdrawal and the publication of final list was nominated as 29th April, 1991. The allotment of symbols also took place after 3.00 p.m. on 29th April, 1991. The date of polling was fixed on 23rd May, 1991 and obviously therefore, the duration of propaganda was between 30th April, to 21st May, 1991. As per original programme, the counting of votes had to take place on 27th May, 1991 and the results were to be declared on 27th May, 1991 soon after the completion of counting. However, on account of the assassination of Rajiv Gandhi, the then sitting Member of the Parliament and former Prime Minister of India on 21st May, 1991, the election programme regarding polling and counting was postponed and the fresh dates that were fixed were 12th June, 1991 for polling and 16th June, 1991 for counting and declaration of results. The polling and counting took place on these changed dates and as indicated, the petitioner secured 2,67,883 votes and respondent No. 1—the returned candidate secured 2,79,520 votes. Other candidates were nowhere near these figures. Shri B. G. Kolshe Patil, who was a candidate of Janata Dal, had filed nominations both at Ahmednagar and Beed and he choose to contest from Beed and accordingly withdrew from Ahmednagar. This was because the Janata Dal candidate was returned from Beed constituency in the previous election.

6. The petitioner was returned as Member of the Parliament in the elections of 1971, 1977, 1980, 1984 and 1989 from 40 Kopergaon Parliamentary Constituency. He contested all those elections as a Congress (I) candidate. However, on account of differences, that developed between the petitioner and the Congress leaders, the petitioner left the congress and chose to contest the election as an Independent candidate and accordingly was allotted symbol of 'bicycle'. Respondent No. 1 was the sponsored candidate of Indian National Congress and he was, therefore, allotted symbol of 'Hand'. Bhartiya Janata Party sponsored advocate Rajabhan Zarkar, who was allotted symbol of 'Lotus'. Doordarshi Party sponsored Respondent No. 11—Sarode Kishor Dinkar, who was allotted symbol of 'Rising Sun', Respondent No. 2—Ashtekar Pramod Nilkanth was sponsored by Indian Congress (Socialist—Sharatchandra Sinha Party) and was allotted symbol of 'Charakha within a rectangle'. Respondent No. 5—Deshmukh Bhagwan Ranganath contested as an Independent Candidate and was allotted symbol of 'Motor Cycle'. Respondent No. 6—Najan Rambhau Maruti also contested as an Independent Candidate and was allotted symbol of 'Cup and Soccer'. Rest of Candidates also contested as an Independent Candidates and they were allotted other symbols, which do not require mention in this election petition. Only advocate Zarkar secured 37,330 votes.

7. The petitioner has contended that respondent No. 1 carried out the election propaganda and made several statements which amount to corrupt practices under Section 123(4) of the R.P. Act and, therefore, his election is liable to be set aside.

8. Going through the various meetings, the first in point is the meeting of 30th April, 1991, which was addressed by respondent No. 1 at village: Sonai. The details are that the meeting was held in the noon and about five thousand people had gathered to hear respondent No. 1. Respondent No. 1 spoke that petitioner should be shown his proper place, after purchasing men on the strength of money the petitioner was trying to contest the election. Respondent No. 1 also adverted to a statement that petitioner had paid Rs. Twenty Lacs to a Janata Dal candidate for Ahmednagar Constituency to contest from Beed constituency. Petitioner was to spend Rs. Three Crores for his election and that he had declared the rate of Rs. 25,000 to village level worker and Rs. 50,000 to taluka level worker for defecting the party. Sunderdas Vithal Harkal and Maruti Sonaji Adhav of Rastapur, tq. Newasa, district Ahmednagar had attended this meeting. Even the press reporters had attended the meeting and the entire account of the meeting was published in the next day papers, which have wide circulation in Ahmednagar district. Ashok Chanderkar represented Sakal paper. Ramdas Dhamale represented Gavkari paper and Satish Kane represented Samachar paper. In Sakal paper and Gavkari paper, the news account of this meeting was published, whereas in Kesari paper on 2-5-1991 the same account was published. These reporters had covered the meeting and the news paper reports which are on record, clearly contain all these allegations. Petitioner has contended that these statements are wholly false and they touch upon the personal character and conduct of the petitioner. They are relatable to the petitioner as a candidate for the election. The said statements were made only to prejudice the prospects of the petitioners at the election. The statement made by respondent No. 1 that the petitioner had paid Rs. Fifty Lacs to Janata Dal is also false. Similarly, the other allegations regarding defection of workers, cycle rally and other expenses to be incurred by the petitioner are also false. The respondent No. 1 knew and believed them to be false. Those statements were made only to impress upon the voters that the petitioner was indulging into act of bribery for inducing Janata Dal candidate to withdraw from election. This was an election offence only to improve the election prospects of respondent No. 1.

9. The petitioner came across these statements from the above papers and he, therefore, immediately denied and this denial was reported in daily Lokmat of 3-5-1991. In this connection, petitioner further stated that he came across the above statement made by respondent No. 1 on 1st May, 1991 when the petitioner received Sakal and Gavkari papers in the morning. The petitioner, therefore, denied and publicly called upon the respondent No. 1 to prove the charges or otherwise withdraw from the election, and this was reported, as indicated, in Lokmat of 3-5-1991. Surprisingly, respondent No. 1 having come to know of this challenge, again spoke at the meeting of the District Congress Committee Ahmednagar, held on 2nd May, 1991 in the evening at Ahmednagar.

10. Coming to the meeting of 2nd May, 1991 at the D.C.C. Office Ahmednagar, the petitioner has contended that the said meeting was attended by Kailash Shivajirao Pathare and Shailesh Sunderrao Dathe both of Ahmednagar, Suresh Aabasaheb Lagad, advocate of Nalegaon and also other workers. These witnesses reported the statement made by respondent No. 1 to the petitioner. In that meeting on 2nd May, 1991, respondent No. 1 had again alleged that the petitioner had paid Rs. Fifty Lacs to the election fund of Janata Dal to secure its support and that respondent No. 1 maintained that allegation and said that such transactions do not take place in photo sessions or never recorded on the stamp papers. The petitioner does not make such transactions by leaving any proof behind and this was known to all. The petitioner contended that these statements made by respondent No. 1 are wholly false and respondent No. 1 made these statements believing them to be false. The statements were made only to prejudice the election prospects of the petitioner. These statements related to the personal character and conduct of the petitioner. The news account of meeting of 2-5-1991 at Ahmednagar was published in Lokmat paper dated 3-5-1991 the extract thereof is annexed to the petition. This news report in Lokmat paper was made by Arun Saunde, who had attended the meeting at Ahmednagar and as per that report, the above statements are said to have been made by respondent No. 1. The said meeting was also attended by news reporters of Daily Nagar Kesari and

Gavkari, namely, Padmabhushan Deshpande and Ramdas Dhamale, respectively. The report was published in daily Kesari of 3-5-1991 and daily Gavkari of 9-5-1991. The reports in all these papers are identical and they unhesitatingly convey the allegations, which respondent No. 1 made relating to the personal character and conduct of the petitioner. The petitioner has emphasized that in spite of publications of these news in the news papers respondent No. 1 never disputed the correctness of the said news items. He never published any statement in any news paper stating that the news reports were incorrect versions of his speeches. In that meeting, respondent No. 1 had also made a statement that Rs. 5,000 were being sent for repairs of Chawri at Ganganagar area of Newasa tahsil. Respondent No. 1 had also further stated that the petitioner was going to have a bicycle rally of 5,000 cyclists and these bicycles were to be permanently given to the participants. This statement has been published in Lokmat of 3-5-1991. The petitioner has contended that all these allegations are false. No cycle rally was taken out nor the petitioner had purchased these bicycles and handed them over to the participants. The statement of respondent No. 1 is thus patently false. Even respondent No. 1 knows that the said statement is false and he believes it to be false. This was thus the election offence by respondent No. 1.

11. The third meeting on which the petitioner has relied is the election meeting held at Newasa Bajartal on 3-5-1991 at 10.30 A.M. This was in the nature of inauguration of the election propaganda for respondent No. 1 from 39 Parliamentary Constituency and Shankarrao Kale from 40 Kopergaon Parliamentary Constituency. This meeting was addressed also by the Chief Minister Sharad Pawar after the address by the respondent No. 1. The petitioner has contended that even at that meeting respondent No. 1 repeated that 5,000 cycles were being distributed, money was being sent out for repairing Chawris, temples and cash was being distributed on behalf of the petitioner. Sharad Pawar took a clue from this speech and made a reference to the statement in presence of respondent No. 1. Sharad Pawar also made a statement that Vikhe is under false impression that poor men from famine affected area of South Nagar District can be purchased. Poor people do not go here or there for money. Do not take test of self-respect of those poor men. Institutions have been erected by taking advantage of party. Voters, however, cannot be purchased by that money. Pawar advised the voters that if the wealth is being distributed, take wealth but vote for congress. The statements were repeated to the effect that petitioner was distributing bicycles, pairs of dhosis and sarees amongst the voters in the constituency. According to the petitioner, there was a large gathering and Padmabhushan Deshpande—reported of Kesari, Vijay Bhandari—reporter for daily Lokmat, Ram Pathade—reporter for Sarvmat, Ramdas Dhamale for daily Gavkari were present at that meeting and they reported these statements made by respondent No. 1 and the Chief Minister in their respective papers. Those papers are Kesari, Lokmat, Sarvmat, Samana and daily Gavkari of 4th May, 1991. The extracts thereof have also been tendered along with the petition. Besides these reporters, Chandrabhan Bajirao Gange of Suregaon, Popat Rambhaji Varkhade of Murme had also attended this meeting. They heard the speeches both by respondent No. 1 and Chief Minister Sharad Pawar and they reported these speeches to the petitioner orally. In the amendment, it is further stated that one Ramnath Mohaniraj Garute had also carried out the video shooting of this meeting at Newasa Bajartal. The petitioner sought leave to examine and get on record the original cassette. The petitioner has contended that respondent No. 1 and Sharad Pawar were knowing that these statements were false. Sharad Pawar also knew that these statements reflected on the personal character of the petitioner. The petitioner was being painted as a person who would do anything to get elected by use of money power.

12. Coming to the interview, which Girish Kulkarni on behalf of Maharashtra Times took of respondent No. 1 on 10-5-1991, the petitioner has contended that respondent No. 1 gave interview to Girish Kulkarni of Maharashtra Times and the said report was published on 13th May, 1991. Maharashtra Times has a wide circulation in the State of Maharashtra. In the said interview, Kulkarni had put up certain questions to respondent No. 1 and one of them was that respondent No. 1 was accusing the petitioner of indulging in corrupt practices and that on what basis or information respondent No. 1 was making those allegations that the

petitioner had paid Rs. Fifty Lacs to the election fund of Janata Dal, Rs. Twenty Lacs to Kolshe Patil to make him not to contest from Ahmednagar but to contest from Beed. To that question, respondent No. 1 replied that petitioner had collected Rs. Three crores from various places to fight out election, as it was a fight for his political existence. It was further stated by respondent that petitioner would be distributing cycles, liquor bottles, dhonis, sarees, cash amongst the workers and that arrangements were made to that effect. It was also stated by respondent No. 1 that the petitioner had been trying to win over the political workers by financial inducements. The copy of that interview has been published in Maharashtra Times dated 13-5-1991 in the name of Girish Kulkarni. The extract thereof is also annexed to the petition. The petitioner has emphatically contended that petitioner had not paid Rs. Fifty Lacs or an amount to Janata Dal election fund, that petitioner had not paid Rs. Twenty Lacs to Kolshe Patil, that he had not distributed bicycles, dhonis, sarees or cash amongst the workers or voters. He also did not attempt to induce the workers of other party with financial support. The Respondent No. 1 knew that the above statement was false. He also believed it to be false. According to the petitioner, such statements amount to corrupt practice under section 123(4) of the R.P. Act. These statements clearly reflected upon the personal character and conduct of the petitioner, and they were intended to prejudice the prospects of the petitioner's election.

13. The petitioner's further allegations are that respondent No. 1 had got hand bills printed and circulated in his constituency. He has named certain persons who distributed those pamphlets and they contain the above allegations. These hand bills were shown to have been printed and published on behalf of M.P. Shri Vikhe Patil Mitra Mandal. They were circulated on 4-5-1991. According to the petitioner, those hand bills were distributed at the instance of respondent No. 1. In that behalf, the complaint was made by the petitioner. However, in this connection, it will have to be stated that these allegations need to reproduction in detail, because even according to the petitioner, it could not be brought on record that these hand bills were published at the instance of respondent No. 1. No evidence was led in this behalf, no witnesses were examined and hence, those details are not mentioned in this judgment.

14. Coming to the last meeting, dated 11th May, 1991 at Shrigonda, the petitioner has contended that this meeting was held at 8.30 p.m. at Shrigonda and the same was addressed by the then Chief Minister Sharad Pawar. The petitioner has been with Indian National Congress (I) since long. He was Member of Zilla Parishad, Ahmednagar from 1962 to 1971, he was the Vice President of Zilla Parishad from 1971, he was also the Member of Parliament as indicated and the Chief Minister made reference to the above facts and stated at the said meeting, "Who is contesting this election against us. On one side there is Rajiv Gandhi and this candidate trying to save the country. On the other side are the ranged people trying to secure votes in the name of religion and some other candidate and on the third side there is some one who went in adoption some where because it was not possible for him to wait when the party told him to wait for some time." This third candidate was contesting the election with their support and had left Congress (I) party and came to the 29 Parliamentary Constituency thinking that this is a soft electorate. Sharad Pawar further stated "that he was not worried about the Bhartiya Janata Party, whose candidate was bound to lose. However, the question relating to the adoptive candidate was different. He was brought up by the Congress, made a member of the Parliament for five times, Office bearer of Zilla Parishad and when he was asked to wait a little, he grew impatient and began searching. He filled up forms both for Kopergaon and Ahmednagar and adopted a stand of interested party while to rebel in South Constituency. While doing so he could not get opportunity in the North. So the idea entered in his mind that South Constituency being a famine prone region and the people being poor, he could pocket them. So he started activating in this path with a view to take over Maharashtra from here and win the election by the efforts of interested parties by playing game of purchasing yourself respect (voters)." Sharad Pawar further emphasized that they must face it and defeat such activity and that is the task to be done at the time of election. At some time the voters will have to tell them that money alone cannot be an

important motivation in this election. What is needed is ideology, policy, programme and morality. It is wrong to give up morality, when one's wish is not fulfilled to leave one party, programme and colleagues, when a favourable decision is not taken and to join hand with other parties. By way of sarcasm, Sharad Pawar further stated that once the 'koom koom' (sacred red powder indicating matrimony) is applied, its sanctity must be maintained. But one does not know that the koom koom was being applied in the name of one person and eyes were looking at somebody else. It is good that this has happened and that he had become aware of it. Sharad Pawar further spoke that once people come to know of this, their views about such person remain limited to a specific work, then the possibility cannot be ruled out that attention will be drawn to all such questions; like what benefit the voter will get which readers are coming to the South, will village chawls be built, will the temple be renovated, will the motor bike be available for riding, will bicycle atleast be available for riding. He has further spoken that it was not in their interest to accept the same. This would not behave their self-respect, but those things must be accepted. Whatever things come out will be coming out from the resources of the Society. If the process of distribution has begun, it is very good in the interest of establishing socialism in this way. Take the same free and use it against them. He further spoke that if they would do this sincerely, then he was sure that all these people shall realize that people of South are poor but their attitude is different. The voters—addressed and their friends, must display that attitude in the election, and the respondent No. 1 should be returned elected by large number of votes. The petitioner stated that Pawar although did not take the name of the petitioner, made all references to the petitioner (in this behalf it may be stated that the learned Counsel appearing for Sharad Pawar has conceded that these remarks related to the petitioner. The above statements, more particularly the portion coming from, "what benefit we will get, right upto the end", are the statements which touch upon the personal character and conduct of the petitioner. The tenor of these speeches was that the voters should accept all those allurements offered by the petitioner. The petitioner was trying to purchase the voters from this famine stricken area, that the amount would be spent for repairing chawls and renovation of temples, for purchasing bicycles and motor bikes and bicycles to be distributed amongst the voters. Pawar also advised the voters to accept all this, because this was the distribution of social wealth and this would truly bring about socialism. The petitioner has stated that petitioner knows Sharad Pawar for last several years, and that the petitioner heard the audio cassette and he could well recognize the voice of Sharad Pawar, who spoke as above. This entire speech was tape-recorded by Ashok Bapusaheb Jamdar of Kokangaon, tq. Shrigonda. Jamdar handed over the audio cassette which was transcribed by Avinash Trimbak Joshi of Loni, tq. Srirampur. The true translation is annexed to the petition. The petitioner has stated that Mahadeo Bala Sumbe of Belwandi Kothar, tq. Shrigonda, Pandurang Sonuji Kale of Adhgaon, tq. Shrigonda, Keshavrao Chintaman Wabale of Mhatar Pimpri tq. Shrigonda heard the speeches and orally conveyed the speeches to the petitioner. These statements reflected upon the personal character and conduct of the petitioner. The said statement made by Shri Pawar are in pari mater'a with the statements made by respondent No. 1, which have been produced at Exhibits 'B' to 'N-4' to this petition. The petitioner has contended that these statements were false and they were made with the consent of respondent No. 1. Both respondent No. 1 and Sharad Pawar believed these statements to be false. These statements were made with the calculation to prejudice the prospects of the petitioner at the election and those statements amounts to corrupt practice under the above provision. The petitioner has contended that the statements made by respondent No. 1 and Sharad Pawar in the presence of respondent No. 1 amount to corrupt practice. These statements clearly amounted to an allegation that petitioner was ready to buy the voters by giving bribes to them. Bribe itself is a corrupt practice under the Election Law. This would, therefore, unequivocally attack on the private character of the petitioner. The statements made by respondent No. 1 and Sharad Pawar were totally false. He further believed these statements to be false and the statements were calculated to prejudice the election prospects of the petitioner. The petitioner has, therefore, prayed that the respondent No. 1

have committed corrupt practices under Section 123(4) of the R.P. Act, and that his election is liable to be declared void and illegal and should be set aside. The further prayer is that the petitioner himself should be declared elected as Member of Parliament from the said constituency.

15. This has been stoutly resisted by respondent No. 1 in his written statement at Ex. 5. He has contended that the only purpose in filing this election petition is to make a political stunt and to raise a bargaining power to facilitate an easy entry for the petitioner into the congress party. The corrupt practices were devoid of material particulars and necessary details and the petition was liable to be dismissed. Now, in this connection, it would be proper to observe that in the Chamber Summons, filed by respondent No. 1, all these preliminary objections were taken and they were that the petition did not disclose the material particulars, did not set forth full particulars of the corrupt practices, that the petition was not properly verified and that all the necessary parties were not joined. All these contentions were negatived in detailed order of this Court, dated 3-2-1992. Various particulars and details were pointed out to show that the election petition was properly presented. On the question of verification, no particular argument was advanced. The Court relied on AIR 1966 Supreme Court 436, in the case of Kamal Narayan vs. Dwarkaprasad and found that the petition could not be dismissed on these preliminary grounds.

16. Now, reverting back to the written statement, Ex. 5, it would be found that respondent No. 1 has contended that petitioner was neither loyal nor wanted to serve congress (I) party and, therefore, was denied the ticket. The petitioner immediately chose to contest as an independent candidate. Regarding Sonal meeting, respondent No. 1 has contended that the contents of the so-called speech containing allegations were never made by respondent No. 1. All these allegations were false, frivolous and imaginary and devoid of any substance. Respondent No. 1 never spoke that the petitioner should be shown his place, that he paid Rs. Twenty Lacs to Janata Dal candidate, that his election budget was Rs. Three Crores, that he had offered Rs. 25,000 to village level workers and Rs. 50,000 to Tehsil level worker. Neither Harkal nor Adhav attended that meeting. The newspaper reports in Sakal, Gavkari and Samachar were false. They were far from true and contained incorrect version. Sakal does not have wide circulation in Ahmednagar district. The said meeting was never attended by Ashok Chandekar for Sakal, Ramdas Dhamale of Gavkari and Satish Kane of Samachar. Thus, respondent No. 1 has stated that at the meeting of 30th April, 1991 at Sonal, he never made any such statements, touching upon the personal character and conduct of the petitioner. The publication of these news in the above papers is grossly distorted, and according to the respondent no. 1, these news papers do not enjoy any credibility worth the name. The news reporting is highly biased, lop-sided and imaginary. The respondent no. 1 neither made any statement nor impressed upon the voters that the petitioner was indulging in the act of bribery.

17. Respondent no. 1 also denied the denial of these allegations by petitioner on 1-5-1991. The respondent no. 1 has no idea of any news reports in daily Lokmat of 3-5-1991, respondent no. 1 did not know such challenge nor did he reiterate such allegations at the meeting of 2-5-1991 held in congress office where congress D.C.C. workers were invited. He has denied that Kailash Shivajirao Pathare and Shailesh Sunderrao Dethle attended the meeting on 2-5-1991 at the above office. He did not make statement at the D.C.C. office meeting that petitioner had taken support of Janata Dal on payment of Rs. Fifty Lacs to the election fund of that party. He never stated that such transactions are never made in photo session or made on a stamp paper. He also did not state that the petitioner was leaving behind no proof of these transactions. Briefly stated, respondent no. 1 clearly denies to have made any such statement which amounts to corrupt practice as alleged. The news reports in daily Lokmat and Nagar Kesari dt. 3-5-1991 are incorrect, far-fetched, imaginary and appear to be politically motivated. He also has, contended that the report of this news meeting in Gavkari, dt. 9-5-1991 is false, frivolous and incorrect. Arun Saunde of daily Lokmat, Padmabhushan Deshpande of Nagar Kesari and Ramdas Dhamale of Gavkari were not at all present at that meeting and hence the news reports tendered by them

are false. Respondent no. 1 has submitted that he never read the reports published in most distorted form in Lokmat, Kesari and Gavkari, regarding the meeting at Ahmednagar and there was, therefore, no question of issuing correct statements and that such reports never came to the notice of respondent no. 1. They came to his knowledge for the first time by this election petition.

18. Respondent no. 1 never made a statement that the petitioner had sent Rs. 5,000/- for constructing chawdi at Ganganagar area of Newasa Tahsil. He also never stated that petitioner was going to take out cycle rally of five thousand cyclists and was to give them to those participants. He does not know that such statement was published in Lokmat, Ahmednagar, on 3-5-1991 any time before he read the election petition. He has also feigned ignorance about the cycle rally being taken out or not and whether these cycles were distributed amongst the participants. He also denied the statement regarding a large sum to be spent to bribe voters and distribution of cycle amongst the participants. There was, therefore, no question of making statement to prejudice the election prospects of the petitioner.

19. Coming to the meeting of Newasa Bajartal, he has stated that he never made statement that five thousand cycles were being distributed, that money was being sent out for repairing chawdis, temples, etc. and that cash was being distributed on behalf of the petitioner. Sharad Pawar did not refer to such statements in presence of respondent no. 1. Sharad Pawar also did not make statement that Vikhe was under false impression that poor men from famine affected area of Nagar could be purchased. He also never spoke that poor persons went here and there for money and he should not test self-respect of those poor men. He also did not state that the institutions were set up by the petitioner on the basis of the advantage accrued to him on account of his candidature allotted by the congress (I) party. Sharad Pawar did not also say about the allurements offered by the petitioner. He, likewise, did not advise the voters to accept the wealth and to vote for congress. According to Respondent no. 1 the news paper reports are incorrect when these reports attribute allegations to respondent no. 1 and Sharad Pawar. He has further stated that Chandrabhan Gange, Popat Warkhede were the supporters of the petitioner and were not present at the meeting.

20. With reference to interview taken by Girish Kulkarni, he has stated that the publication of the interview in the Maharashtra Times, dt. 13-5-1991 was either the distorted version or the same did not reflect on the correct versions of answers given by respondent no. 1. Girish Kulkarni never posed a question to him that he was accusing the petitioner of indulging in corrupt practices. The respondent no. 1 were merely asked as to why accusations were made by the public regarding corrupt practices being committed by respondent no. 1 and what was his reaction. The respondent no. 1 denied to have stated, that according to his information, the petitioner had paid Rs. Fifty Lacs to the election fund of Janata Dal for its support, Rs. Twenty Lacs to B. G. Kolshe Patil to contest election from Beed and to withdraw from this Parliamentary Constituency of Nagar. He also did not say that Rs. Three crores were collected by the petitioner from various sources to fight the election. Likewise, he never alleged that the petitioner was distributing bicycles, liquor bottles, dhotis, sarees, etc., and also cash amount amongst workers. He also never spoke that the petitioner had made arrangement for such distribution of various articles mentioned above. He never spoke that the petitioner was offering financial inducements to win over the political workers. Hence, the contents published in Maharashtra Times interview referring to above allegations is false. Respondent no. 1 had expressed his dissatisfaction regarding the publication of this interview in distorted form by writing a letter to Maharashtra Times.

21. Regarding hand bills, Respondent no. 1 has denied that he issued such hand bills. Regarding Srigonda meeting, he has stated that it is a fact that petitioner was a Member of Indian National Congress, a Member of Zilla Parishad, Ahmednagar from 1962 to 1971, but they are not relevant. However, petitioner defected from congress as soon as he was not given party ticket for the Parliamentary Elections. The voters from both these constituencies have always re-

turned congress nominees. The statements made by Sharad Pawar during the meeting at Srigonda did not reflect on the personal character and conduct of the petitioner. Sharad Pawar never made a statement that temples were being renovated, chawdis were being built, motor bikes were available for riding, that bicycles were made available by the petitioner for riding by him or at his instance, that there was no reference to the voters of famine area being bought over and that petitioner was spending huge amount in the constituency by spending those amounts on repairs of temples and building of chawdis or purchasing bicycles, etc. and distributing them amongst the voters. Mahadeo Bala Sumbe, Pandurang Sonuji Kale and Keshavrao Chintaman Wabale are the supporters of the petitioner and they never attended any such meeting at Srigonda. Newspaper reports are also not correct and for all these reasons, the respondent no. 1 submitted that the election petition should be dismissed. Now, it may be stated here that there is no reference to the audio cassette recorded by Ashok Jamdar about this meeting and impliedly, therefore, there is no denial of the audio cassette recorded by Ashok Jamdar.

22. On these pleadings, the issues are framed at Ex. 7. They are as follows :

- (1) Whether the petitioner proves that the Respondent No. 1 in his Election Meeting on 30-4-1991 at village Sonal in 39 Ahmednagar Parliamentary Constituency spoke touching upon the personal character and conduct of the petitioner as detailed in Para 9 of the petition, although the speakers knew that the allegations made were false or not true to his knowledge ?
- (2) Whether the Petitioner proves that Respondent No. 1 again reiterated the same allegations referred in Issue No. 1 before District Congress Committee on 1-5-1991 as detailed in Paras 10 and 11 of the petition ?
- (3) Whether Petitioner proves that the Respondent No. 1 and Sharad Pawar with the consent and knowledge of the Respondent No. 1 spoke at the Election Meeting on 3-5-1991 at Newasa Bajartal touching upon the personal character and conduct of the Petitioner, although both the speakers knew that the allegations were not true or were false to their knowledge as detailed in Para 12 of the Election Petition ?
- (4) Whether the Petitioner proves that Respondent No. 1 got his interview with Girish Kulkarni of Maharashtra Times published in Times issue on 13th May, 1991 and that the same was circulated in the Constituency and that the said interview touched upon the personal character and conduct of the Petitioner, although Respondent no. 1 knew that the contents of the interview were false or were not true to his knowledge as detailed in Para 13 of the Election Petition ?
- (5) Whether the Petitioner proves that Respondent No. 1 and his workers published and circulated the pamphlets Exhs. 'M' and 'N' in the Constituency and that the contents of those pamphlets reflected upon the personal character and conduct of the petitioner as detailed in Para 14 of the Election Petition ?
- (6) Whether the Petitioner proves that Sharad Pawar the then Chief Minister, with the consent of Respondent No. 1 at the Meeting on 11-5-1991 at Srigonda spoke touching upon the personal character and conduct of the Petitioner as detailed in Para 16 of the Election Petition, although both the Respondent no. 1 and Sharad Pawar knew that the allegations were false and not true ?
- (7) Whether the Petitioner proves that Respondent No. 1 carried out his Election campaign through above speeches and publications and committed corrupt practices under Section 123 (4) of the Representation of People Act ?
- (8) Whether the election of Respondent No. 1 is liable to be set aside ?

23. My findings on the above issues are as follows :—

Point Nos.	Findings
(1)	Yes.
(2)	Yes.
(3)	Yes.
(4)	Yes.
(5)	No.
(6)	Yes.
(7)	Yes.
(8)	As per final order.

REASONS

Preliminary objections to the maintainability of the Petition.

24. The learned advocates for respondent Nos. 1 and 6 have contended that the petition has not been presented in person by the petitioner and this is required under section 81 of the R. P. Act. The endorsement shows that the petition has been presented by the Advocate Vinayak Hon. who has filed both Vakalatnama and the Special Letter of Authority signed by the petitioner for accepting the petition in absence of the petitioner because of his sickness. This does not amount to proper presentation in view of the case law laid down in various rulings to which reference is made below. It is further contended that even though for a moment, the Court comes to a conclusion that the said letter of authority is a power in favour of Vinayak Hon to present the petition, the same is not duly stamped and that the copy thereof has not been supplied along with the Election Petition. This is the material omission on the part of the petitioner and this is the breach of mandatory provision which should entail the dismissal of the petition in limine.

25. In support of this contention, the authorities cited are as follows :

In 1956 Election Law Reporter 174 in the case of Ramanlal V/s. Shiv Pratap Singh, the High Court of Madhya Pradesh found that the Election Petition was presented by the petitioner's counsel and not by the petitioner personally nor in the petitioner's immediate presence. The formality of presentation of the petition by the candidate himself, however insignificant may appear under the circumstances, was yet a mandatory formality, the non-observance of which invalidated presentation. Although the R. P. Act does not specifically provide for presentation of petition by the petitioner himself personally, the intention of the legislature is clear when it provides for the wording that "The petition shall be presented by the candidate or elector" and particularises the person as such and not anybody else acting on behalf of the petitioner except possibly the power of attorney holder. As the Court is enjoined by Section 86 (1) of the R. P. Act to dismiss the petition, if the presentation does not comply with the provisions of section 11, the manner of presentation by the very nature of penalty imposed for non-compliance makes it obligatory and the compliance ought to be within the letter of the law. The Court can not infer implied powers to cut down or to enlarge the scope of the express provision of the Act by invoking the provisions of the Civil Procedure Code. The said Court must operate subject to the provisions of the Election Law and should only look to the provisions of the Civil Procedure Code where the R. P. Act or Rules made thereunder may not provide such procedure or provisions.

26. Full Bench of the Allahabad High Court in 28 Election Law Reporter 185 in the case of Sir Washim Naavi V/s Sir Brijnath Singh, has observed that when the Election Petition presented was not to the Election Commission by duly authorised person as required by sub-section 81(2)(a)(ii) in as much as the Vakalatnama did not expressly authorise the advocate who presented it to make such presentation, there would be infraction of section 81. The view, however, was that the Vakalatnama as a whole gave authority to the petitioner's advocate to present the Election Petition before the

Election Commission. On reference to the Third Judge, he held that the compliance of the above provisions must be strictly complied with and that authority to present the petition must be clearly express and in this matter, technicalities could not be disregarded. The petition was, therefore, not properly presented.

27. In 41 Election Law Reporter 146, equal to 1969 (1) S.C.L. 480 in the case of Sheodhan Singh V/s. Mohanlal Gautam, the Supreme Court held that if the petition is presented by the Advocate's Clerk in presence of the petitioner before the Registry, the petitioner in substance, though not in form, himself presented the petition.

28. In 46 Election Law Reporter 374 in the case of Reddy N. J. V/s. C. R. Reddy, the High Court of Andhra Pradesh held that an election petition presented by an advocate duly authorised by the petitioner should be deemed to have been presented in accordance with law since the Act of 1951 does not lay down different procedure for the presentation of election petition than the one prescribed by the Code of Civil Procedure.

29. It would be found from the above cases cited that if the advocate has specific authority, which is in the nature of letter of authority or the power of attorney, he can certainly present the election petition and in this case, it is not disputed even by the learned advocate for the respondent No. 6 that the authority letter annexed to the petition clearly is a letter of authority which can well be construed as power of authority in favour of advocate "Hon" to present the petition and, therefore, no infirmity can be found in the presentation of the election petition.

30. However, the next limb of the argument is that the said power is not duly stamped and, therefore, it would be a document which can not validate the presentation of the election petition. Now in this regard, section 93 of the R. P. Act has been relied upon which reads as follows :—

"93. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence at a trial of the election petition on the ground that it is not duly stamped or registered."

Under this provision, therefore, the letter of authority is admissible, although it is not duly stamped. However, the further argument is that such document should be tendered in the evidence at the trial of the election petition. In this case, this infirmity occurs at the initial stage of petition. When section 93 uses the word "Trial", it presupposes the stage after framing of the issues in the election petition and that is recording of evidence. Such being not the stage, at which this letter of authority is presented, the petition is liable to be dismissed. However, when one looks to the Civil Procedure Code, at no stage one finds the word "Trial" for the hearing of the suit. In Civil Procedure Code, under Order 18 what is contemplated is a hearing of the suit and the examination of the witnesses. The word "Trial" has been scrupulously deleted and this is because by reference to the previous Orders, namely Order 11—Discovery and Inspection; Order 12—Admissions, a stage may be reached where the suit may be decided even without recording the evidence and that is essentially on the documents. Even the examination of the parties is contemplated under Order 10 prior to the framing of issues. All this would tantamount to a proposition that it may not be necessary to record the evidence in all the Civil Suits. There may be a suit where the documents are manifest to enable the Court to decide the suit and hence the word "hearing" cannot be equated with the word "Trial".

In Criminal Procedure Code, word "Trial" is specifically used in several Chapters. In Chapter 18 of the Criminal Procedure Code, provisions relating to trial before the Court of Sessions are laid down and they commence right from the opening of the case by the prosecution, discharge, framing of charge, prosecution evident etc. Similarly in Chapter 19, the procedure for trial of warrant cases by the Magistrate is provided and in Chapter 20, trial of summons case by Magistrate is envisaged. In Chapter 23, the mode of taking evidence at trials is incorporated and in Chapter 24, several provisions are cited in regard to enquiries and trial and if that be so, it will have to be held that the word

"trial" used in section 93 would not connote the stage of recording evidence and the production of documents. The normal meaning attached to the word "trial" shall have to be taken into consideration and hearing of the trial shall be deemed to have begun from the date of presentation of the election petition. This is all the more underscored by the fact that the petition can be dismissed even in limine on the grounds which are in the nature of mandatory grounds, not observed while presentation of the election petition. Again Chapter 3 of Part 6 is in relation to the disputes in election petition. Section 86 commences with the caption "trial of election petition" and provides that the High Court shall dismiss the election petition which does not comply with the provisions of Section 81, Section 82 or Section 117 of the R.P. Act. The latter provisions relate to the presentation of election petition, the accompaniments etc. Trial is thus relegated to the stage of presentation of Election Petition under section 81 of the R.P. Act.

31. In the first instance, the Chief Justice has to assign the election petition to a particular Judge. Under section 87 procedure to be observed by the High Court in conduct of the election petition is referred to. Obviously, therefore, the word "trial" has been construed in the R. P. Act as commencing from presentation of the Election Petition. It would be, therefore, obvious that the objection is not sustainable.

32. The next limb of argument is that the copy of that authority letter should be forwarded along with the election petition. The respondent should not be required to see the record of the election petition as to find out whether the petition has been properly presented. If it is not presented in person, the petition is liable to be dismissed and, therefore, the copy of the letter of authority should be annexed to the petition. The reply that is canvassed is that the contents of the petition referred in section 83 are a concise statements of material facts, statements of full particulars of corrupt practices and that the petition shall be signed and verified in the manner laid down in Code of Civil Procedure. In case of corrupt practices, the petition has to be accompanied by an affidavit in the prescribed form in support of the allegations of corrupt practices. Schedule or Annexure to the petition have to be similarly verified. The contents of the petition, therefore, do not make the letter of authority as the necessary ingredient of the valid election petition and hence, no copy need be furnished, and this is the correct submission and the argument on behalf of the respondents has to be rejected.

33. The next contention canvassed is that in the copy supplied to the respondents and the Noticee Pawar, there is no mention of affirmation and the authority before whom the affidavit under Rule 94(A) of the R.P. Rules and Form 25 is sworn in and hence the petition is liable to be dismissed.

34. Heavy reliance is placed on A.I.R. 1992 BOMBAY 227 in the case of Purushottam V/s The Returning Officer, Amravati. This Court held that absence of endorsement of a Notary on copy of the affidavit accompanying election petition is fatal. In that case, the copy of the election petition did not bear an endorsement—(1) affirmed and signed before me; (2) the designation and name of the Notary, and (3) the stamped endorsement regarding affirmation by the Notary. The Court held that this was not the true copy of the election petition and accordingly, dismissed the election petition in limine. In support of this argument, the Court relied upon the observations in the case reported in A.I.R. 1984 S.C. 956 in the case of Rajendra Singh V/s Usha Rani. The relevant observations in that case are as below :—

"Thus it is clear from the above observations that it is no part of the duty of the respondent to wade through the entire record in order to find out whether the copy supplied to him was a correct one or not. In the present case, in absence of the endorsement of the Notary on the copy supplied to the returned candidate, it was not possible for him to know whether the affidavit was really sworn and if so, before whom it was sworn and on what date? Thus it is not possible to hold that the copy supplied to the returned candidate really conforms to the requirements of section 81(3) of the Act."

The reasoning adopted by the Court is that the respondent will not be in a position to point out that a person who has administered oath was not in existence or had no authority to administer the oath or that the signature and endorsement on the document purported to have been made by the alleged authority were vague.

35. It would be found that in Rajendra Singh's case, the facts were grave and the observations of the Court were, therefore, compelling. In that case, two sets of copies were supplied to the respondents; one correct set of copies being the exact of the original but the other set contained vital omissions and mistakes regarding the details of corrupt practices alleged by the petitioner. The Court found that there was no clear evidence regarding the correct or incorrect copies delivered to the respondents and in that light of the matter, the Court observed that the adherence to the procedure was primary over justice although section 86(1) may be a tyrannical master. It would be evident from the judgment that even some of the pages of the election petition were not supplied in the copy and in that light, the Court refused to be persuaded by an argument that the objection raised on behalf of the respondent was highly technical. As indicated above, the omissions were vital including the omissions regarding corrupt practices.

36. In this election petition, it would be found that the election petition has been sworn before the Additional Prothonotary and Senior Master on 29-7-1991. The affidavit was likewise sworn before the same authority and the same was signed by the petitioner. Now in the copy, when examined, it is noticed that the words "Solemnly affirmed by E.V. @ Balasaheb Vikhe Patil at Worli Co-operative Housing Society, Flat No. 1703, Pochkhanwala Road, Bombay-18, this 29th day of July, 1991". In the original petition, the signature of petitioner is identified by advocate Vijay D. Patil. There is signature of the petitioner below the solemn affirmation and it is followed by words "Before me" and thereafter there is signature of Additional Prothonotary and Senior Master, High Court, Bombay along with his stamp. The same is dated 29-7-1991. Now in the copy supplied, only the signature and stamp of the Additional Prothonotary are missing. In case of Purushottam V/s Returning Officer, there were no words—the endorsement "Affirmed and signed before me". Similarly the designation and the name of the Notary and the stamped endorsement were also absent. In this case, it would be found that only the signature and the stamp of the Additional Prothonotary and Senior Master are missing in the copy. On facts, therefore, the ruling in Purushottam's case (supra) can well be distinguished. In Purushottam's case, it could be argued that there was no inkling that affidavit was at all sworn. This omission is substantial and it could be held that from the copy, an impression was made that the copy was not at all sworn. In the present case it can be said that affidavit is sworn by the petitioner but not before which authority. Notary is wholly unconnected with High Court and it may appear that verification of the authority of Notary may be necessary. Such would not be in the case of Prothonotary and Senior Master of High Court. The facts in Purushottam's case are not congruous with the facts in present petition and hence this Court is entitled to examine the arguments from all angles and arrive at its own conclusion. After all, it is the entire judgment that is binding and not the Ratio Decidendi. (See Seervai's Book on Constitution Chapter 25 Para 25.89). The ratio decidendi based on set of facts would be binding. If the facts are different on material points, the Court can look afresh at the case before it and decide by itself the matter. Again the objection is taken at the conclusion of trial and thus there is implied surrender of the grievance of prejudice.

ABOUT DOCTRINE OF PRECEDENTS

37. The learned counsel for the noticee and the learned counsel for the respondent No. 1 have very emphatically urged that the decision of this Court reported in A.I.R. 1992 Bombay 227 in the case of Purushottam V/s The Returning Officer should be taken as binding on this Court wherein the Court has held that if the copy of the petition and affidavit annexed thereto under Rule 94(A) of the Conduct of Election Rules and Form 25 does not carry endorsement "Affirmed and signed before me"; bear designation and the name of the Notary; the stamped endorsement regarding the

affirmation before the Notary, it would not be the true copy of the affidavit and there is thus infraction of section 81(3) of the R.P. Act. There is also non-compliance of section 83 and the result contemplated under section 86 of the R. P. Act should follow and it is the dismissal of the election petition in limine. It will have to be remembered that this objection was taken at the inception in the trial and the Court felt that the objection had to be sustained and further that the petition had to be dismissed.

38. This argument is countered by the learned advocate for the petitioner on two counts. In the first instance, he has contended that the doctrine of precedents would not be available in this case because this is an Election Petition, before the Election Tribunal. The High Court has been substituted in the place of Election Tribunal in the amendment of 1966 to the R. P. Act but all the same, it remains an Election Tribunal, which has no trappings of the High Court under the Constitution of India. It is contended that the doctrine of precedents could not be pressed with all its rigours in decisions in Election Petitions and, therefore, this Court should go into the question afresh and should not dwell on hyper technical aspect which would make it practically impossible for the petitioner to prove his case. The Supreme Court has more than once criticised the approach of the High Court when it was smelt of being hyper technical. Such approach has been castigated by the Supreme Court in A.I.R. 1976 S.C. 2169 in the case of Virendra-singh V/s. Vimalkumar and in A.I.R. 1955 S.C. 425 in the case of Sangramsingh. It would only be sub-cutaneous enquiry in the petition but that would really defeat the purpose for which the High Court is vested with the powers of Election Tribunal. He has also urged that the High Court working as Election Tribunal is not a Court of Record provided under Article 215 of the Constitution of India. It is a Trial Court and not the High Court and, therefore, the precedents can not bind the discretion of this Court.

39. Now in this regard, the learned counsel for the noticee has drawn my attention to several rulings which provide that the doctrine of precedents has benevolent parameters because the precedents keep the law predictable and so more or less ascertainable. In A.I.R. 1985 S.C. 89 in the case of Surindersingh v/s. Hardayal, the Supreme Court, while discussing English law in this behalf, observed as follows:—

"Their Lordships regard the use of precedents as an indispensable foundation upon which to decide what is the law and its application to individual case. It provides at least some degree of certainty upon which individuals can rely in conduct of their affairs as well as the basis for orderly development of legal rules."

Repelling the arguments of the learned counsel, the Supreme Court further observed:—

"A Judge made change in the law rarely comes out of a blue sky. Humblings from olympus in the form of obiter dicta will give warning of unsettled weather. Unsettled weather is itself, of course, bound to cause uncertainty but inevitably precedes the acceptance of a change."

40. The learned counsel for the noticee has also drawn my attention to the following cases. The reference to these cases appears to be necessary. In A.I.R. 1960 S.C. 936 in the case of Mahadeolal Kanodia V/s. The Administrator General of West Bengal, the Supreme Court, on the question of precedents observed that:

"A Division Bench should not take upon itself to say that an earlier decision of the Division Bench cited before it is wrong but should follow the usual procedure in case of difference of opinion with an earlier decision of referring the question to a Larger Bench. Judicial decorum, no less than legal propriety, forms the basis of judicial procedure. Similarly a Single Judge differing from a decision of another Single Judge in a previous case on a question of law should refer the case to a Larger Bench instead of deciding the case in accordance with his own view."

In that case, the earlier Bench of the Calcutta High Court in A.I.R. 1954 Calcutta 119 in the case of Deorajan V/s. Satyadhyan Ghosal has taken a view that all the pending applications under section 28 of the Calcutta Thika Tenancy (Amendment) Act, 1953 were maintainable in spite of deletion of Sec. 28 being deleted by the Amendment Act of 1953. The Supreme Court observed that the High Court in the above case should not have taken a contrary view although it strongly felt and rightly so that the decision rendered in Deorajan's case was erroneous. The proper method was to refer the matter to the Larger Bench. It may be stated that in the Amendment Act of 1953, it was clearly provided that section 28 was deleted retrospective but all the same, the Supreme Court felt that the Division Bench cannot by-pass the earlier decision of another Division Bench under the doctrine of precedents being of binding nature.

41. In A.I.R. 1964 S.C. 136 in the case of A. Raghavamma V/s. A. Chenchama, the Supreme Court observed that one Division Bench is bound by the decision of another Division Bench rendered prior in point of time. In that case, the question for consideration was as to whether when a coparcener severs from the co-parcenary. The Court observed that as soon as the co-parcener entertained the idea of separating from other co-parceners and as soon as the same was communicated to the affected person, there was severance of status. The previous judgments rendered by different Courts about this proposition were held to be binding on the Court.

42. In A.I.R. 1965 S. C. 1767 in the case of Lala Shri Bhagwan V/s Ram Chand, the Supreme Court observed :—

"Although it was an error on the part of the High Court of Allahabad to take the view that orders passed by the State Government under section 7F of the U. P. Control of Rent and Eviction Act of 1947 were administrative orders, the latter Single Judge should not have taken the view contrary to precedent as indicated above but should have referred the matter to the Chief Justice for being placed before the Larger Bench."

The Court pertinently observed that :—

"It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take a view that the earlier decisions of the High Court whether of a Division Bench or of a Single Bench need to be reconsidered, he should not embark upon the enquiry sitting as a Single Judge but should refer the matter to the Chief Justice for being put before the Larger Bench."

This doctrine is founded on a healthy principle of judicial decorum and propriety and the Single Judge should not have departed from this traditional way of putting the matter before the Chief Justice.

43. In AIR 1968 S. C. 372 in the case of Tribhovandas Purushottamdas Thakkar V/s Ratilal Motilal Patel and others, the Supreme Court dilating upon the Judicial precedents, observed that :—

"Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of subordinate authority or superior authority.

Undoubtedly every judgment must be based upon the facts declared by the Evidence Act to be relevant and duly proved. But when a Judge in deciding a case follows a precedent, he only regards himself bound by the principles underlying the judgment and not by the facts of that case."

In that case, the Court was dealing with the competency of the subordinate court to set aside the sale effected in pursuance of the execution of decree under Order 21 Rule 89 and the Court found fault with the approach of the Courts

below that in view of section 36 of the Bombay Public Trusts Act, the sale in execution of the decree was not valid in absence of previous sanction from the Charity Commissioner. The Court held that the sales under the Code of Civil Procedure are not hit by any of the provision of section 63 of the Bombay Public Trusts Act. The action of the lower Court in setting aside the sale on deposit of 5 per cent of the purchase money payable to the auction purchaser by the judgment debtor would enable the Court to set aside the sale. The High Court of Gujarat has observed that section 36 of the Bombay Public Trusts Act rendered the sale in execution of decree invalid in absence of previous sanction from the Charity Commissioner. Since this view was contrary to the previous decisions, the Supreme Court observed that the single Judge was bound by the precedent and should not have taken a contrary view without referring the matter to the Chief Justice for being put up before the Larger Bench. In all these matters, previous judgments having binding nature were set aside by the Supreme Court.

44. These judgments emphasising the doctrine of precedent are in relation to the matters which have been decided by the High Court either in its appellate jurisdiction or revisional jurisdiction, but by no means in the original jurisdiction of the Trial Court. It would be seen that under Article 215 of the Constitution of India, the High Court shall be a Court of Record and shall have all the powers of such Court including the power to punish for contempt of itself. The incidence of the Court of Record can be enumerated as it has a power to determine the question about its own jurisdiction and it has inherent powers to punish for contempt summarily.

45. While dwelling on the powers of the Court of Record, the Supreme Court in Special Reference No. 1 of 1964 reported in 1965 (1) S.C.C. 413 arising out of the warrant of committal in respect of Keshav Singh and two Judges of the High Court, who were sought to be produced before the House of the Legislative Assembly of Uttar Pradesh referred to as to what is meant by Court of Record. Deriving the essence of this phrase of Court of Record, from Jowitt's dictionary on English Law, it is found that the Court of Record is a Court whereof the acts and judicial proceedings are enrolled for perpetual memory and testimony and which has the power to fine and imprison for contempt of its authority. The Supreme Court held that the High Court is a Court of Record and it has all the powers to decide the questions of liberty relating to the citizens irrespective of whether warrant is issued by the Legislature. The brief facts in that case are that the Legislative Assembly of the State of Uttar Pradesh committed one Keshav Singh, who was not one of the Members, to prison for its contempt. The warrant of committal did not contain the facts constituting the alleged contempt. Keshav Singh approached the High Court through his Advocate by petition under Article 226 of the Constitution of India and section 491 of the Criminal Procedure Code, challenging his committal as being in breach of his fundamental rights and prayed for interim bail. The Bench of the High Court gave notice to the Government Counsel. However, the Government did not put in appearance. Two Judges, who heard that application, ordered release of Keshav Singh in pursuance of Article 226. The Legislative Assembly found that Keshav Singh and his Advocate, in moving the High Court and the two Judges of the High Court, in entertaining the petition and granting bail, had committed contempt of Assembly and passed a resolution that all of them be produced before it. The two Judges and the Advocate preferred petition before the High Court of Allahabad and the Full Bench of the High Court ordered the stay of the execution of the Assembly resolution against them. The Assembly then passed a clarificatory resolution which clarified its earlier stand and instead of being produced in custody, the Judges and the Advocate were asked to appear before the House and offer their explanation. It is at this stage that this reference was made by the President of India and while discussing on this reference, the Court laid down the above observations.

46. The Court also observed that the State Legislature of India could not by virtue of Article 194 (3) claim to be the sole Judges of their powers and privy Judges to the exclusion

of the Courts. The power to interpret any article including Article 194 lay with the judiciary under the scheme of Indian Constitution. It was not the intention of the Constitution to perpetuate in India the dualism that totally destroyed the public life in England during 16, 17 and 18 centuries. The Supreme Court further observed that such power existed with the House of Lords which could be construed as the superior Court of Record as the House of Lords and the Judicature (Privy Council) were regarded as part and parcel of the House of Commons. The judicature was obviously subordinate to the House of Lords which was the main opponent of the House of Commons. This raised a fierce struggle between the House of Commons on one hand and the House of Lords on the other. But such is not the historical background in India. It would be thus obvious that all the powers of the House of Commons would not vest in the Legislature in terms of the above Article 194. The legal inference that can be drawn from the above observations is that the Court of Record is the custodian of all the acts in judicial proceedings that take place before the Court and breach thereof may invite contempt proceedings. It can, therefore, be gathered that the High Court being the highest Court, where the litigation would terminate, is regarded as the Court of Record and the record of proceedings and the judgments would be binding on the subordinate Courts and under the doctrine of precedents, on the coordinate Courts.

47. In A.I.R. 1967 S.C. 1 in the case of Naresh Mirajkar and others V/s The State of Maharashtra, the Supreme Court went into the question of powers of the High Court as being the superior Court of Record and the Supreme Court observed that :—

"One distinguishing characteristic of such superior Courts of Record is that they are entitled to consider the questions of their jurisdiction raised before them..."

Rejecting this background in the case of Keshavsingh (supra), the Supreme Court observed that :—

"In case of superior Court of Record, it is for the Court to consider whether any matter falls within its jurisdiction or not. Unlike the Court of limited jurisdiction, the superior Court is entitled to determine for itself a question about its own jurisdiction. That is why this Court did not accede to the proposition that in passing the order passing interim bail in the above case, the High Court can be said to have exceeded its jurisdiction with a result that the order in question was null and void."

48. The relevant observations from the House of Lords of England were also reproduced and they are as follows :—

"Prima facie no matter is deemed to be beyond the jurisdiction of a superior Court of Record (supplied) unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior Court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court. If the decision of a superior Court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law but until the adjudication of the superior Court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by exercise of writ jurisdiction of this Court."

The Supreme Court also further observed on the distinction of the superior Court and inferior Court as follows :—

"The quarter it became with the word 'Inferior' as applied to the Court of Law in England has been used with at least two very different meanings. If, as some assert, the question of inferiority is determined by ascertaining whether the Court in question can be stopped from exceeding its jurisdiction by writ of prohibition... but there is another test will recognise that the matters, by which to distinguish a superior Court from an inferior Court, namely whether in its proceedings and in particular in its judgment, it must appear that the Court was acting within its jurisdiction. This is the characteristic of

an inferior Court whereas in the proceedings of superior Court, it will be presumed that it acted within its jurisdiction unless the contrary would appear either on the face of the proceedings or aliunde."

49. The clear distinction which emerged from the above observations is that the Court of Record is a superior Court which is the custodian of its judgments and proceedings; that the superior Court has inherent powers to try all the matters and that that jurisdiction cannot be thwarted by use of writ jurisdiction. From this, another proposition would follow and that is the High Court, which is normally the final Court, delivers judgments which are binding in the character. From the scope of Civil Procedure Code or the Criminal Procedure Code, it will be manifest that there are no appeals or revisions provided to the Supreme Court. In Civil Procedure Code, it would be seen that under section 109, the appeals to the Supreme Court are permissible only if the High Court certifies that the case involves a substantial question of law of general importance and that in the opinion of the High Court, the said question needs to be decided by the Supreme Court. In the Criminal Procedure Code, the same scheme exists inasmuch as the Supreme Court has not been referred to as the rightful forum for determination of the criminal matters which are finally decided by the High Court, both in its appellate as well as revisional jurisdiction. The powers of the Supreme Court are enunciated in Articles 133 to 136 and they are the powers which can be used very sparingly.

50. In Article 133, it is provided that an appeal shall lie to the Supreme Court from any judgment, decree or final order in civil proceedings of the High Court if the High Court certifies under Article 134A that the case involves a substantial question of law of general importance and that in the opinion of the High Court, the said question needs to be decided by the Supreme Court. This is analogous to section 109 of the Civil Procedure Code. In Article 134, it is provided that an appeal shall lie to the Supreme Court from any judgment, order or sentence in a criminal proceeding of the High Court if the High Court, on appeal, reversed an order of acquittal of an accused person and sentenced him to death or has withdrawn for trial before itself any case from any Court subordinate to its authority and has, in such trial convicted the accused person and sentenced him to death or certifies under Article 134(A) that the case is a fit one for appeal to the Supreme Court.

51. This would also indicate that the role of the Supreme Court is strictly limited to entertaining appeals wherein the order of acquittal has been set aside by the High Court and the accused has been sentenced to death or when the High Court has withdrawn the case from subordinate Court and has tried and convicted the accused to death or in the alternative, the certificate under Article 134(A) is granted. The High Court, under Article 134(A), can grant certificate on its own motion or on an application made by the aggrieved party. Under Article 135 of the Constitution of India, the Supreme Court is vested with the powers of Federal Court until Parliament by law provides otherwise. Article 136 relates to the special leave appeal by the Supreme Court which would be notwithstanding Articles 132 to 134. This provision has been made to cover those areas which cannot be identified in the foregoing articles. The long and short of this discussion would be that the High Court remains the last Court in the matter of judicial proceedings and hence in order to avoid uncertainty in law, the doctrine of precedents has to be enforced.

52. Several, in his book 'Constitution of India' in Chapter 25 para 2589 has sustentantly observed regarding the precedents as follows :—

"Our Supreme Court has held that "precedents which enunciate rules of law from the foundation of administration of justice under our system", but the Supreme Court has rightly observed that it is well settled that the decisions of even the highest Courts on the questions of fact can not be cited as precedents. In Shama Rao V/s Pondicherry, reported in A.I.R. 1967 S.C. 1480, it is observed that :—

"It is tried to say that a decision is binding not because of its conclusion but in regard to its ratio and the principles laid down therein."

Whatever judgments are considered to be binding on Courts, it is not merely the ratio decidendi of the judgment but the judgment itself, which is binding. This is especially true of judgments of appellate Courts where the Judges may agree about the conclusion but for different and, at times, incompatible reasons. There are some areas left open to use the discretion."

53. From the foregoing discussion, it would be manifest that the binding nature of the decisions delivered by the High Court arises from an important fact that the High Court is the last Court or the superior Court whose decisions would be binding under the Constitution both on the subordinate Courts and on the co-ordinate benches under the doctrine of precedents. The march of litigation in almost all matters ends in the High Court under Constitution.

54. But when one looks to the Election Petition under the Representation of People Act, it will be manifest that the High Court trying the Election Petition is the Election Tribunal. In the decision of this Court reported in 1991 M.L.J. 81 in the case of Ramesh Shankar More V/s. Ramesh Moti-prasad Dube, it is laid down that the High Court is merely a Tribunal deciding an election dispute on the election petition filed under the R. P. Act. Its powers are wholly the creature of the statute under which it is conferred the power to hear the election petition. An election petition is not an action at law or a suit in equity but it is a purely statutory procedure unknown to the common law and the Court possesses no common law powers. In Punnaswamy's case reported in A.I.R. 1952 S.C. 64, the Supreme Court laid down that all the disputes relating to election shall be decided in the election petition. There cannot be two fold attack; one under the R.P. Act and the another under Article 226 of the Constitution of India. Where a right or liability is created by statute, which gives a special remedy for enforcing it, the remedy provided by the statute only must be availed of.

55. The R.P. Act is a self-contained enactment so far as the elections are concerned. The underlined idea in construction of the above provision is that the important functions that the Legislatures have to perform must hold prime importance and for that purpose, the elections should be concluded as early as possible according to the time schedule and all controversial matters and all disputes arising out of the election should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or predicated. In that case, the appellant had filed nomination for election of the Madras Legislative Assembly. The same was rejected and the appellant, therefore, moved the High Court under Article 226 of the Constitution of India praying for a writ or certiorary to quash the order of the Returning Officer. The High Court refused to interfere and this approach was upheld by the Supreme Court by dismissing the appeal for the reasons stated above. Article 329(b) and section 80 of the R.P. Act were construed to mean that once the election process has set in, it cannot be thwarted by any alternative remedy namely writ before the High Court. That question shall have to be decided only by the Election Court.

56. This position is further clarified in A.I.R. 1978 S.C. 851 in the case of Mahinder Singh Gill V/s. The Chief Election Commissioner wherein the Court reiterated the view of Punnaswami's case and observed that the election covers the entire process from issue of notification under section 14 of the R.P. Act till the declaration of results under section 66 of the said Act, the cancellation of elections is a subject which falls within this amplitude and cannot be agitated in any alternate form namely the writ jurisdiction of the High Court. In A.I.R. 1988 S.C. 915 in the case of Upadhyaya Hargovind D. V. Solanki, the Supreme Court observed that:—

"If Parliament intended that Division Bench of the High Court should exercise its appellate jurisdiction under clause 15 of the Letters Patent of the High Court, probably would not have enacted sub-section (7) of section 86 of the R.P. Act. The remedy is provided in section 86 itself. The Supreme Court in para 15 observed:—

It means that when the election petition is pending in the High Court, only the Judge who is asked

to try an election petition can deal with the questions arising in it and no other Judge or Judges of the High Court can deal with them. When the order passed by the Judge of the High Court in election petition is an order passed under section 98 or 99 of the R.P. Act, it is subject to the appellate jurisdiction of the Supreme Court under section 116-A of the Act and Article 136 of the Constitution of India naturally stands excluded in view of the above provision. Obviously, the Division Bench sitting in appeal under clause 15 of the Letters Patent of the High Court cannot hear an appeal against any interlocutory order in regard to trial of the election petition by the Judge trying the election petition since the Division Bench is not specified in the Act as an appellate authority which can deal with questions arising out of an election petition filed under the Act."

This would, therefore, clarify that the powers of the High Court are the powers formerly possessed by the Election Tribunal. These powers are available only under the R.P. Act. The powers of the High Court under writ jurisdiction are curtailed so far as the election petitions are concerned. Basically, therefore, the High Court acts as a trial court and it cannot be assumed that the High Court has impliedly other powers under Chapter V of the Constitution of India. If that be so, the decision rendered in the election petition would certainly not be the decision rendered by the High Court in appeal and taking the clue from the observations from Seervai's book as aforesaid, the binding nature of the precedent, on no reckoning, cannot be so rigorous as envisaged under the doctrine of precedents elucidated in the foregoing four judgments of the Supreme Court. It must be remembered that the Election Judge cannot refer to the Division Bench any matter decided by other Single Judge. The learned counsel for the noticee has referred to (1906) XXXI I.L.R. 110 in the case of Hafiz Beg V/s. Mohammad Cossum, wherein this Court held that the Court was bound by its previous decision. He also cited some decisions from Empire Digest (Vol. 30) 279 and has urged that where appeal is provided, the Courts are bound by the decision of co-ordinate jurisdiction. In this case, appeal to the Supreme Court is provided under section 116-A of R.P. Act and hence, decision in Purushottam's case is binding. But the above decisions are with respect to High Court under Chapter V of the Constitution.

57. The judgment of the Election Tribunal is liable to be appealed against under section 116 of the R. P. Act. The first appellate court would be, therefore, the Supreme Court and no other Court and if that be so, the doctrine of precedents arising from the judgments of the Supreme Court besides Article 141 would prevail over the doctrine of precedents arising out of the decisions of the High Court when the High Court is sitting as Election Court. It is, therefore, felt that the decision rendered in the case of Purushottam V/s. The Returning Officer of this Court (supra) would not derive this Court from considering other aspects in the matter and decide the matter on other counts, of course without totally bye-passing or disregarding the judgments referred above. I have held that the facts in Purushottam's case are slightly but materially different and even without bye-passing doctrine of precedent, I feel that I am entitled to consider this case afresh.

58. In this case, it is manifest that the question of prejudice would not be available to the complainant-respondent No. 1 or the notice. It has been fairly conceded by the learned counsel for the notice that although under the Manohar Joshi's case, he is in the place of respondent—returned candidate—he cannot have recourse of section 81, as the copy of the election petition along with other materials is delivered by the Court, not at the instance of the petitioner. All the same, the avenues of the notice can well be equated with the avenues available to the respondent—returned candidate and it is in this background that the preliminary objection about the copy has been raised.

59. The learned advocate for the petitioner has contended that actually the decisions which have been relied upon by the Court in Purushottam's case are altogether in different

background. In those cases, the prejudice could be clearly seen and that they were taken at the inception. In the case of Rajendrasingh, reported in A.I.R. 1984 S.C. 956, the Court observed that it is no part of the duty of the respondent to go through the entire record in order to find out which is the correct copy. As indicated, the position was hopelessly grave inasmuch as certain copies contained material omissions with regard to the names of important witnesses. It was bound to prejudice the defence of the respondent. In the case of M. Kamalan reported in A.I.R. 1978 S.C. 840 Court had observed that the copy which was was the integral part of the petition but as indicated in Sapa's case reported in A.I.R. 1991 1557, the Court observed that the said ratio as limited to the facts of that case. In this background, therefore, this Court cannot be precluded from considering the facts in this case independent of the ratio laid down in Purushottam's case.

60. It would, therefore, proper to consider the decisions about true copy which have been handed down by the Supreme Court.

61. To begin with in A.I.R. 1990 S.C. 1731 in the case of Lalit Kishor Chaturvedi V/s. Jagdish Prasad Thada and others, the Supreme Court had laid down the parameters about the grounds on which the petition is liable to be dismissed in limine and they are—lack of verification or presentation of petition beyond time or for defecting joinder of depositing prity deposit for costs. These are the defects parties or for non-depositing security deposit for costs. These are the defects in presentation of a original petition. The Court further observed that dismissal for failure to disclose cause of action under Order 7 Rule 11 of C.P.C. is in the course of trial. It cannot be, therefore, said that election petition could be dismissed apart from merit, only for one of the reasons mentioned under section 86 (1) of the Act.

62. In the case of Sapa V/s Singora reported in A.I.R. 1991 S.C. 1557, the Supreme Court did not disassociate itself with the observations of the Judge of Allahabad High Court, who relied on the observations of the Supreme Court in A.I.R. 1972 S.C. 1302 in the case of Raj Narayan V/s. Indira Gandhi :—

"Rules of pleadings are intended as aids for fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the Court to ascertain that principle and implement it."

However, the Supreme Court in para 14 of the Sapa's case also observed :—

"It is fairly well settled that our election law being statutory in character must be strictly complied with since an election petition is not guided by ever changing common law principles of justice and notions of equity. Being statutory in character, it is essential that it must conform to the requirements of our election law. But at the same time, the purity of election process must be maintained at all costs and those who violate the statutory norms must suffer for such violation. If the returned candidate is shown to have secured his success at the election by corrupt means, he must suffer for his misdeeds."

These observations would make it clear that hyper technical view almost bordering on tyrannical interpretation should not be employed in interpreting the election law. At the same time, the mandate behind, more particularly, section 81 of the R. P. Act must be observed strictly.

63. In A.I.R. 1964 S.C. 1027 in the case of Subrao V/s. Member, Election Tribunal, the Court held that under section 81(3), there are some requirements which are mandatory and some of which are discretionary. Those requirements which are discretionary can be substantially completed

with and there would not be any infraction of the above provisions. However, when there is breach of a mandatory provision, the petition is liable to be dismissed. In Subrao's case, the copies of the election petition were signed by the petitioner, but there was no attestation in the sense that the words "True Copy" were omitted about the signature of the petitioner. The Court held that the signature was sufficient to indicate that the copy was attested as true copy and the omission of word 'true copy' could not vitiate the true nature of the copy as required under section 81(3) of the R.P. Act. It is necessary to mention here that the present case, the copy of the affidavit supplied to the respondents there is an endorsement "True Copy" duly signed by the petitioner.

64. In A.I.R. 1965 S.C. 815 in the case of Dr. Anup Singh V/s. Abdul Gani and others, the Supreme Court adopted the ratio in Subrao's case and found that the original signature of the petitioner on the copies without the words 'true copy' shall be substantial compliance of section 81(3) of the R.P. Act. It should be notice that this is a view which the Supreme Court has taken in face of the clear provisions that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his signature to be the true copy of the petition. The normal interpretation available from this provision contained in section 81(3) would be that the copy should be attested with such endorsement as "True Copy" and duly signed by the petitioner, certifying that it is true copy. The Supreme Court in the above cases of Subrao and Dr. Anup Singh was persuaded by an interpretation that no specific form of attestation was provided either in the Rules or Statute and signature alone was enough to certify that the copy supplied was the true copy. In A.I.R. 1978 S.C. 840 in the case of M. Kamalan V/s. Dr. V. A. Syed Mohammed the Supreme Court held that signature of the petitioner at the foot of the affidavit tied with the main petition was sufficient compliance of section 81 r/o 83 of the R. P. Act. In fact, it constitutes one document and no fault could be found that there was no signature of the election petitioner below the election petitioner. This is nothing but liberal view taken by the Supreme Court. The Supreme Court condoned the absence of signature of the petitioner below the election petition and observed that the affidavit was the integral part of the petition and accordingly, refused to dismiss the election petition on that count alone. This is noticeable departure which would persuade the Court to hold that such omissions or lapses do not constitute any fraction of section 81(3) of the Act. When the provision contained in section 83 relating to contents of petition requires that the petition shall be signed by the petitioner and verified in the manner laid down in the Code, absence of signature of the petitioner on the petition has not been treated as fatal. The affidavit containing corrupt practices was held to be integral part of the election petition and it was construed that signature beneath the affidavit was enough not to vitiate the validity of the election petition.

65. In A.I.R. 1984 S.C. 305 in the case of Mithilesh Kumar Pandey V/s. Baidyanath Yadav and others, the Court laid down five principles which have to be complied with at the time of presentation of election petition :—

- (1) That where the copy of the election petition served on the returned candidate contains only clerical or typographical mistakes, which are of no consequence, the petition cannot be dismissed straightaway under section 86;
- (2) A true copy means a copy which is wholly and substantially the same as the original and where there are insignificant or minimal mistakes, the Court may not take notice thereof;
- (3) Where the copy contains important omissions or discrepancies of a vital nature, which are likely to cause prejudice to the defence of the returned candidate, it cannot be said that there has been a substantial compliance of the provisions of section 81(3) of the Act;
- (4) Prima facie, the statute used the words "true copy" and the concept of substantial compliance cannot be extended too far to include serious or vital mis-

takes which shed the character of a true copy so that the copy furnished to the returned candidate can not be said to be a true copy within the meaning of section 81(3) of the Act and

- (5) As section 81(3) is meant to protect and safeguard the sacrosanct electoral process so as not to disturb the verdict of the voters, there is no room for giving a liberal or broad interpretation to the provisions of the said section."

Now in the above ratio, it would be clear that clerical or typographical mistakes which are of no consequence, can not vitiate the validity of the election petition. Where the copy contains important omissions or discrepancies of vital nature, which are likely to cause prejudice to the returned candidate, it can not be said that there has been a substantial compliance of the provisions of section 81(3) of the Act. In that case, there were serious mistakes and omissions inasmuch as five witnesses who were involved in corrupt practices were omitted from the copy of election petition. There are 15 names which were missing in the copy of the election petition and in that light, the Court found that the copy was not the true copy of the election petition. In the circumstances, indicated above, the observations are fully justified and on no reckoning it could be said that the copy could be corrected in line with the election petition. It would not be the job of the respondents to carry out corrections from the main petition.

66. In Sapa's case (supra), the Court went into several aspects of the form of the election petition and the affidavit. In the first instance, it will have to be borne in mind that under Section 83 of the R.P. Act, only if the corrupt practice is alleged then that allegation should be accompanied by the affidavit prescribed under Rule 94(A) in Form 25 of the Rules. It would be, therefore, abundantly clear that affidavit is not necessarily the integral part of the election petition but an accompaniment. In the case of M. Kamalan, supra, the Court held that affidavit which was signed at the foot became an integral part of the election petition, but the Supreme Court observed that this was not the Rule but the observations based on the peculiar facts. The Court observed in the following words :

"The observations in Kamalan's case have to be read in the context of controversy before the Court. The dispute between the parties was limited to the fulfilment of last part of section 81(3) viz. the requirement that every such copy of the election petition shall be attested by the petitioner under his own signature to be the true copy of the petition. As the signature was found at the foot of the affidavit, the Court concluded that the affidavit was an integral part of the election petition. However in other cases, the Court found that defective verification or defective affidavit would not be fatal to the maintainability of the election petition. The Court examined various sheds of circumstances where the mistake could be condoned."

The object of the affidavit is highlighted in the following observations :

"While there is sufficient justification for the law to be harsh with those who indulge in such practices, there is also the need to ensure that such allegations are made with the sense of responsibility and concern and not merely to vex the returned candidate. It is with this view that the law envisages that the particulars of such allegations shall be set out fully disclosing the name of the party responsible for the same and the date and place of its commission. A simple verification was considered insufficient and, therefore, the need for an affidavit in the prescribed form. These procedural precautions are intended to ensure that the person making the allegations of corrupt practice realises the seriousness thereof as such a charge could be akin to a criminal charge since it visits the party indulging in such practice with a two fold penalty. The Court has chosen to describe such trial as quasi criminal in nature and, therefore, the insistence that each ingredient of the

charge must be satisfactorily proved before the verdict of guilt is recorded by the Court."

In I. M. Mani's case reported in AIR 1979 S.C. 234, the Supreme Court held that the allegations must be established beyond reasonable doubt and not merely by preponderance of probability. It would be evident that the affidavit has to accompany the election petition in order to highlight the allegations regarding the nature of corrupt practice and the responsibility that would flow on the petitioner to prove the allegations beyond reasonable doubt. It is a rule of evidence and for breach thereof, the petitioner even can be imposed with penalty of dismissal of the petition and costs.

67. In this light, the Court went into the question as to what is the consequence of a defective or incomplete verification and what is the consequence of a defective affidavit. The Court held that the affidavit is intended to support the allegations of corrupt practice and the particulars thereof pleaded in the election petition. Order 19 Rule 3 of C.P.C. provides that the affidavit should be confined to such facts as the deponent is able on his own knowledge to prove or has gathered it from other source. The argument that the absence of source of information should be treated as fatal. Now in that behalf, the Court laid down that the defective verification not mentioning the source of information can not be fatal; firstly because the Form 25 does not provide for such requirement. It may be stated that the Rules of the High Court also do not provide for such requirements. The Madhya Pradesh High Court Rules require the affidavits to mention the source of information and in Virendra Kumar Saklecha's case reported in AIR 1974 S.C. 1957, the Supreme Court held that Rule 7 of the M. P. High Court Rules require the source of information is believed to be stated. But such is not a case here and hence the argument of respondent No. 7, according to the petitioner, can not be countenanced. The Supreme Court by way of ratio laid down in para 27 has observed as follows :—

"From the text of the relevant provisions of the R.P. Act, Rule 94-A and Form 25 as well as Order 6, Rule 15 and Order 19 Rule 3 of the Code and the 'sume' of the case law discussed above, it clearly emerges (i) a defect in the verification, if any, can be cured; (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true; (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in the prescribed form 25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation under Section 81 (3) as indicated earlier. Similarly the Court would have to decide in each individual case whether the schedule or annexure referred to in Section 83(2) constitutes an integral part of the election petition or not; different considerations will follow in the case of the former as compared to those in the case of the latter."

As stated above, the present election petition and the copy thereof are duly signed and the affidavit is separately signed. It can not be, therefore, concluded that the affidavit is an integral part of the election petition.

68. From the above trend of reasoning in the aforesaid cases, it would be evident that the omission alleged by the respondent would not be fatal. The learned advocate has submitted that there is a doctrine of enquiry or investigation which has to be made by the respondent. In this case, the respondent did not raise such a question right upto the conclusion of the trial. They were aware that the original petition was duly signed and endorsed by the competent authority and hence, they can not now say that this lapse or omission in the true copy should prove fatal to the election petition. No prejudice is proved at the stage when objection is raised. The endorsement about verification in the copy does not give an appearance that affidavit is not at all

sworn as to be found in Purushottam's case. The Supreme Court, in such a situation, has observed in several cases that the argument may be valid at the earlier stage but the same can not assume any gravity when that stage is past and the entire evidence is led before the Court and doctrine of onus of proof becomes academical. This should, therefore, conclude preliminary legal objections raised by the respondents and the notice.

SONAI MEETING ON 30-4-1991

69. In this election petition, the petitioner has alleged that in various meetings held by respondent No. 1, he gave utterances touching upon the personal character and conduct of the petitioner under section 123 (4) of the R. P. Act. These meetings took place on 30-4-1991 at village Sonai; on 2-5-1991 at the District Congress Committee Office at Ahmednagar; on 3-5-1991 at Bazar Tal, Newasa and the fourth meeting dated 11-5-1991 at Shrigonda. It is also claimed that the respondent No. 1 gave an interview to one Girish Kulkarni—the reporter of Maharashtra Times—and reaffirmed the same allegations he had made at various meetings and the said report was published in Maharashtra Times' issue dated 13th May, 1991.

70. Broadly speaking, according to the petitioner, the allegations can be enumerated as follows. Firstly, the petitioner was to spend Rs. 3 crores for the purposes of contesting the election. It was his prestigious election since he was contesting from 39 Nagar Parliamentary constituency for the first time against respondent No. 1. The petitioner had asked for congress nomination from this constituency but the same was declined because respondent No. 1 was already the Member of Parliament from this constituency. He was elected as Member of Parliament from this constituency in the Parliamentary elections of 1984 and again in 1988 and possibly, therefore, the congress party did not want to take risk by putting up a candidate namely the petitioner who had hitherto contested Parliamentary elections for five times from North Ahmednagar constituency namely 40 Kopergaon constituency and was returned on all these occasions as Congress (I) nominee. It was precisely because of this situation that the petitioner was not granted congress ticket and as, according to the petitioner, the workers of Nagar constituency desired him to contest the election from this 39 Nagar constituency, he had offered himself as an independent candidate. He was later on backed by Janata Dal party.

71. The other allegation was that the petitioner had paid Rs. 20 Lakhs to B. G. Kolse Patil—the candidate sponsored by Janata Dal Party from this constituency—who withdrew to this offer and decided to contest from Beed Parliamentary constituency. The another allegation was that the petitioner was to take out rally of 5000 cycles and was to distribute those cycles to the participants in the rally. The petitioner had paid Rs. 50 Lakhs to Janta Dal for securing its support. The further allegation was that the petitioner had declared a rate of Rs. 25,000 for defecting worker of village level and Rs. 50,000 for worker of Tahsil level. The other allegations were that the petitioner was to distribute sarees, dhoties in the constituency and was to carry out repairs to the Chawadies and temples, situated in the above Parliamentary constituency from where he was contesting the election. Likewise, there were some allegations that the petitioner wanted to purchase the poor voters from this famine prone constituency but, according to the petitioner, both respondent No. 1 and Sharad Pawar—the then Chief Minister—had made a statement that the petitioner could not purchase the self respect of the poor voters. These are all the allegations which, according to the petitioner, touched upon his personal character and conduct and he has, therefore, claimed that the election of respondent No. 1 should be declared as

null and void and should be set aside and further that Sharad Pawar should be named as the person who has committed corrupt practice under section 99 of the R. P. Act.

72. As indicated, this has been stoutly denied by the respondent No. 1. So far as Shri Shardhandra Govindrao Pawar is concerned, he did not chose to cross examine any of the witnesses deposing against him and the learned counsel appearing for him simply contended that the notice is defective on several counts and that it should be discharged. To this aspect, I shall come later. But suffice it to say that notice Pawar has not contested the evidence led on behalf of the petitioner. Of course, it can not be said at this stage that the petitioner has discharged the onus of establishing the corrupt practices alleged to have been committed by respondent No. 1 and Pawar but all the same, if these corrupt practices are established, Pawar would not be able to disassociate himself on any other count except on the count of technical objections raised by the learned counsel for the notice Pawar. It must also be borne in mind that if the petitioner is held not to have proved these corrupt practices, notice Pawar is entitled to have the benefits which would accrue to respondent No. 1 in this election petition.

73. Now going back to the respondent's meetings, the meeting dated 30th April, 1991 was the first meeting which respondent No. 1 held at village Sonai in furtherance of his election campaign.

74. Sonai meeting was held on 30-5-1991 and even respondent No. 1 had not challenged that such meeting was not held. In his written statement as well as in his deposition at Exh. 328, he has contended that he did not utter any statement which would characterise the petitioner as a person who wanted to employ wealth and win the election by hook or crook. Now going to the details as enumerated in the election petition, the petitioner in para 9 of his petition has stated that the same meeting was attended by about 5000 people and that the respondent No. 1 stated that we should show proper place to Shri Vikhe, who is contesting this election. After purchasing men on the strength of money. Vikhe was trying to contest the election. Dialing on the particulars of the allegations, it is stated that respondent No. 1 made a statement that petitioner had paid Rs. 20 Lakhs to the candidate Shri B. G. Kolse Patil (former Judge of this High Court) to withdraw from this constituency and to contest the Parliamentary election from Beed constituency. Respondent No. 1 further alleged that the petitioner was going to spend Rs. 3 crores for his election. It was further alleged that the petitioner had declared a rate of Rs. 25,000 for defecting workers of village level and Rs. 50,000 for workers at Tahsil level. This meeting, according to the petitioner, was attended by Sunderdas Vitthal Harkal, Maruti Sonuji Adhav. The various reporters, who are examined about the said meeting, are Ashok Chandekar on behalf of Sakal paper, Ramdas Dhamale on behalf of Gaonkari paper and Satish Bane on behalf of Samachar paper. They had published the offending statements in their respective papers in the issues dated 1-5-1991 and 2-5-1991. According to the petitioner, the statements were reported in Gaonkari on 1-5-1991 and in Samachar on 2-5-1991. The necessary extracts have been annexed to the petition.

75. Turning to the written statement at Exh. 5, respondent No. 1 has contended that although the meeting was held on 30th April, 1991 at Sonai, the statements, as alleged by the petitioner, were not uttered by him. The reporters Ashok Chandekar, Ramdas Dhamale, Satish Kane had really not attended the meeting. Likewise Sunderdas Harkal and Adhav had also not attended the meeting. The publication of the newspapers really does not reflect the truth. He had not uttered any of the allegations canvassed on behalf of the petitioner. According to respondent No. 1, all these publications are false and hence the evidence led on behalf of the petitioner should not be believed. It would be thus manifest that the respondent No. 1 has not canvassed the case that the candidate either believed those allegations to be false or did not believe them to be true.

76. The evidence available in respect of this Sonai meeting comprises of the evidence of P.W. 9 Ramdas Dhamale at Exh. 79; P.W. 10 Saush Kane of Samachar paper; P.W. 12 Asnok Chaudhkar of Sakal paper at Exh. 94 and P.W. 7 Sunarao Vithal Harkal at Exh. 75. The evidence of these witnesses is sought to be countered by the evidence of Narendra Chandel on behalf of the respondent No. 1 at Exh. 178. Besides these witnesses, there is evidence of the petitioner at Exh. 15 and respondent at Exh. 328. Now so far as the petitioner is concerned, he has stated that soon after the meeting, he had received information from Harkal and Adhav about the statements touching upon the personal character and conduct of the petitioner made by respondent No. 1. He challenged those statements in the next day paper and contended that if those allegations are proved to be true by respondent No. 1, petitioner would withdraw from the election or vice-versa. In the meeting on 1-5-1991 at Nagar, the petitioner spoke that the allegations were false and this was published in the paper.

77. As against this, respondent No. 1 in his evidence at Exh. 328, emphatically denied the allegations made against him in regard to the personal character and conduct of the petitioner, in this behalf, the evidence of Ramdas Dhamale at Exh. 79 would be most pertinent, Ramdas Dhamale had attended the meeting of 30th April, 1991; of the District Congress Committee at Nagar on 2-5-91 and Newasa Bazar Tal meeting on 3-5-1991. For the present, his evidence is discussed only with reference to the Sonai meeting on 30-4-1991. Of course, on the question of credibility of this witness, the entire evidence has to be considered and if this witness is found to be credible, those conclusions will have to be carried to the meetings dated 2-5-1991 at Nagar and 3-5-1991 at Newasa Bazar Tal.

78. Before adverting upon this evidence, it would be fruitful to traverse through the law laid down with regard to newspapers. Now under section 81 of the Evidence Act, it is settled position of law that there is a presumption under section 81 of the Evidence Act about the genuineness of statements in newspapers. Every presumption as to the truth cannot be attached to the contents appearing in the newspaper. A report of speech made in the newspaper is not admissible in evidence to prove the speeches. The party must produce the person who had made the speeches or the person in whose presence the person had made the speech or the reporter of the newspaper in whose presence such speeches were made and who had sent the report to be published in the newspaper. This proposition is to be found in A.I.R. 1939 Rajasthan 280. In the case of Kane more reported in A.I.R. 1947 S.C. 405, the Court observed that a report of a speech made in the newspaper is not admissible in the evidence to prove the speeches. The party must produce the person who had made the speeches or the persons in whose presence such speeches were made or the reporter of the newspaper in whose presence the speeches were made and who have sent the report to be published in the paper.

79. In A.I.R. 1961 Punjab 215 in the case of Harbhajan Singh V/s. The State of Punjab, the same ratio is reiterated in the following words :—

"The presumption of genuineness attached under section 81 of the Evidence Act to a newspaper cannot be treated as proof of the facts reported in that paper, as a statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence in absence of maker of the statement appearing in the Court and deposing to have pursued the fact reported."

It would be found that in this case, the Court was of the view that only the maker of the statement can depose about the newspaper report and the correctness thereof. Further as indicated in the Rajasthan ruling, it would be evident that if the speaker of the offending statement is not available or in the alternative, if the party does not choose to examine the maker of the statement, who would be naturally inclined to incriminate himself in any such offending statement, if may

examine the person who heard the speech or the reporter who heard the speech and sent the report to the newspaper.

80. In A.I.R. 1961 Mysore 106 in the case of Sangappa V/s. Shivmurthyswami, the Court observed that the newspaper report cannot be created as substantive evidence unless the correspondent who made the report is examined. If the correspondent is not examined, the report appearing in the newspaper can not amount to evidence on which the respondent can rely to support the charge. Similarly in A.I.R. 1969 S.C. 1261 in the case of S. N. Balkrishna V/s. George Fernandes, the Court observed in para 47 of the judgment as follows:—

"A news item without any further proof of what had actually happened through the witness is of no value. It is at best a secondary evidence. It is wellknown that the reporters collect the information and pass it on to the paper who edits the news items and then publishes it. In this process, the truth might get perverted or curtailed. Such news items cannot be said to be proved themselves although they may be taken into account with other evidence if other evidence is available."

The settled position of law which emerges from the foregoing discussion can be worded as follows:

"Newspaper reports are not substantive evidence although presumption of genuineness attached to a newspaper. It can not be treated as proof of the facts reported therein unless the correspondent or the maker of the statement is examined in the Court. They are to be understood as incriminating statements and can not stand by themselves except by corroboration."

81. Now so far as P.W. 9 Dhamale at Exh. 79 is concerned, he is the person who has attended the meeting at Sonai on 30th April, 1991 and gave the report in Gaonkari paper at Exh. 80. Prima facie, therefore, Dhamale satisfies the requirement which the law requires in proof of the contents of the newspaper. Dhamale is known to the respondent No. 1 as the reporter and respondent No. 1 has categorically admitted that Dhamale is the known reporter. Respondent No. 1 has cited Dhamale as his witness in the Recrimination Petition but has not examined him. His attendance at the Sonai meeting dated 30th April, 1991 has been disputed. Dhamale, in his deposition, has stated that he is staying at village Johur in Nagar Tahsil. He was formerly working as reporter for Dainik Gaonkari, which was published from Nagar and Jalgaon. He has been the reporter since last 12 years. Dainik Gaonkari is published from Nagar, Jalgaon and the same paper is printed at Nasik. Dhamale was with Gaonkari paper for four years. He joined Lokmat paper and remained with that paper for five years. He again joined Gaonkari paper and at the relevant time, he was working for Gaonkari paper. On the date of this deposition on 25th June, 1992, he was working as the Sub-Editor of Lokmat paper, which is published from Nagpur, Aurangabad, Nagar and Jalgaon.

82. It would be essential to note that Dhamale changed the papers for betterment of his prospects and that appears to be natural because in one's own life time, one would make all attempts for personal betterment and pave way for better future. If in that light, Dhamale has changed the papers namely Gaonkari, Lokmat etc. it cannot be said that he is the witness who can not be depended upon and that he is a person who is inclined to shift his loyalties. After all, the monetary betterment remains the watchword for any human being. I, therefore, feel that this can not affect the credibility of Ramdas Dhamale. He has stated that he attended Sonai meeting on 30th April, 1991. The same meeting was held at Mula Public School and this fact is also not disputed by respondent No. 1. The meeting was scheduled to be held at 9.00 a.m. but he reached that place at about 11.00 or 11.30 a.m. and that before starting of the meeting, he was present there. There was a dais provided for the speakers. He is unable to recollect as to whether there was pendal. It was a

meeting of Congress workers. Raisa Shaikh of Zilla Congress; Marutirao Ghuic Patil, President of Zilla Bank; Assaram Howare the Municipal Councillor; Nana Deokar also the Councillor were present. However, there were no speakers from outside Sonai. He was emphatically stated that respondent No. 1 was also present and he spoke twice. He gave introductory speech and then speech guiding the workers.

83. He has further stated that he heard the speech of respondent No. 1 and prepared the report, which is published in newspaper Gaonkari on 1st May, 1991 at Exh. 80. He has affirmed that the said report was made by him and that the paper publication in Exh. 80 is the complete reproduction of his report. It does not contain any omissions or additions besides his report. He has stated that the originals are normally destroyed within a fortnight because the news items are so many that it would be impossible to maintain those reports for long. Ordinarily they are destroyed after few weeks. He has stated that he had not added any word so as to deviate from the truth of the utterances. While dilating on the speeches made, he has stated that respondent had stated that the independent candidate—petitioner—had secured the support of Janata Dal on payment of consideration. The respondent No. 1 also spoke that the petitioner had entered into an agreement with Janata Dal by paying Rs. 50 lakhs to secure the backing of Janata Dal. Janata Dal had initially declined to grant ticket to the petitioner. However, thereafter as Rs. 50 lakhs were paid to the Janata Dal, Janata Dal changed its decision. The Janata Dal candidate Kolse Patil was asked to contest from Beed and behind this also, there was payment of consideration.

84. Respondent No. 1 further spoke that the budget for the election was Rs. 3 crores. Rs. 25,000 were to be paid to the village level workers and Rs. 50,000 were to be paid to the taluka level workers. Dhamale has stated that 5,000 to 6,000 people were present. He attended the meetings at Nagar and Nawasa but the evidence of this witness would be discussed at the relevant time. However, in the cross examination, he has stated that he does not remember as to whether the workers were complaining to respondent No. 1 that the petitioner was to spend huge amount to tab the workers. He also does not remember as to whether other speakers were telling that the petitioner was to spend huge amount and that respondent No. 1 gave advice to them not to be nervous over these temptations. He has stated that the meeting was over by about 3 or 3.30 p.m.

85. It may be stated that neither the respondent No. 1 nor other witnesses have disputed this time of the meeting. He has further stated that as the meeting took place before more than one year, he could not gather the details of the speech. He has also unable to give the number of speakers at various meetings. He is also unable to say as to whether at Newasa meeting, Sharad Pawar was offered turban by way of felicitation. He is also unable to give the particulars of the dress put on by the respondent No. 1 and Sharad Pawar nor the sequences in which the speeches were made. He attributes all those lapses due to the passage of time and has stated that he can give the details on reference to the papers. Regarding Sopan Darandale, he has stated that Sopan Darandale was reporter of Gaonkari paper at Sonai. Darandale was also present at that meeting at Sonai. Although Darandale was reporter, Dhamale attended the meeting under the general instructions of the paper that important meeting must be covered by Sub-Editor like Dhamale. He has denied that his paper runs on the advertisements given by the petitioner. According to him, the reports would not contain all the details. That seems to be only because the speakers who would be so prominent in regard to the speeches, would only be referred to in these news reports. Only the highlights involving some sensation in the statements would be reported. The usual utterances bolstring the election prospects of the candidate would not be repeated because they are often spoken about in the constituency.

86. He has flatly denied that these reports are made at the behest of the petitioner. He has denied that respondent No. 1 did not speak anything objectionable at the meeting at Sonai. Regarding the report in Gaonkari dated 9th May, 91, he has stated that when the news are dispatched late on teleprinter, the synopsis have to be reported and accordingly published. He declined to have covered Jamkhed meeting and, therefore, has stated that the petitioner speaking about Gundam could not be true. Khardekar, according to

him, is the reporter of Samachar at Jamkhed but he is unable to say as to whether report in Samachar paper at Exh. 85 is given by Khardekar. He has stated that his wife serves at Primary Health Centre at Johur but has denied that the petitioner was responsible for getting her employed. Regarding the reports for respondent No. 1, he has stated that Sopan Darandale has been reporting for respondent No. 1 and one Ramdas Kadam for the petitioner. He has also affirmed that Sopan Darandale is reporter for several newspapers and that Shanaishwar Publicity is of Darandale.

87. On perusal of Exh. 80 Gaonkari paper dated 1-5-1991, it would be found that there are allegations against the petitioner. In portion A to A, it is stated that the petitioner had monetary dealing or bargain with Janata Dal and secured the support in South Nagar constituency. This was uttered by respondent No. 1 in his meeting at Sonai. In portion B to B, it would be maintest that the respondent No. 1 spoke that the petitioner had paid Rs. 50 lakhs to Janata Dal fund and thereafter the Janata Dal decided to support him and that Janata Dal candidate from Nagar decided to contest from Beed and this also was on the basis of payment of money. There is also clear allegation that the petitioner had the budget of Rs. 3 crores for the election and that he had declared payment of Rs. 25,000 for defecting worker at village level and Rs. 50,000 at taluka level. This, according to Dhamale is the statement which reflected upon the personal character and conduct of petitioner. There is no person to reject the testimony of Dhamale on this count. He is the author of this report Exh. 80 and there are direct allegations made by respondent No. 1, which can be enumerated as follows :—

- (1) Petitioner had monetary bargain with Janata Dal for securing its support;
- (2) That petitioner had paid Rs. 50 lakhs to Janata Dal fund and that Janata Dal decided to support him;
- (3) The election budget of the petitioner was Rs. 3 crores and that Rs. 25,000 were to be paid to defecting worker at village level and Rs. 50,000 were to be paid to workers of taluka level.

These allegations primarily touch upon the personal character and conduct of the petitioner.

88. The other witness is P.W. 12 Ashok Mohaniraj Chandekar at Exh. 94. He is the reporter for Daily Sakal. His father was the agent of Daily Sakal since 1957. In 1961 he had covered the Goa Police Action at the end of which, Goa was annexed to Indian Union. He was also the reporter on border during China aggression in 1962. He had reported the activities of Nefa border while staying at Teipur in Assam. His reports were published in Daily Sakal. Since 1957, he is working as reported and he has stated that Sakal paper has wide circulation. During the election period, Sopanrao Darandale of Shanaishwar Publicity was looking after the publicity campaign of respondent No. 1 Yeshwantrao Gadakh. Darandale used to come to him for delivering news items to be published in Daily Sakal. Coming to the particular news item, he has stated that Daily Sakal dated 1-5-1991 at Exh. 101 is based on the report of Sopan Darandale. Sopan Darandale had attended Sonai meeting. This fact is not disputed by respondent No. 1.

89. In that report, it was stated that the petitioner had paid Rs. 50 lakhs to the election fund of Janata Dal. As this was a serious allegation, Chandekar enquired from Darandale as to whether respondent No. 1 had uttered those statements. He had also stated that the petitioner was to spend Rs. 3 crores for the election. Rs. 20 lakhs were paid to the Janata Dal candidate to withdraw from Nagar and to contest from Beed. The said report is at Exh. 102 signed by Darandale (xerox copy). Regarding the original report given by Darandale, he has stated that he had signed it. He had prepared the news item on the basis of this report so as to make it readable to the members of public. However, he has stated that he had not added a single word to the published news item at Exh. 101. In the cross examination, he has stated that he was in possession of xerox copy of the report by Darandale. He has stated that Annasaheb Parulekar—the founder of "Sakal" died in 1972 and, there-

fore, there was no question of he being arrested in emergency of 1975. He admits that during emergency, Sakal paper had criticised the policy of Indira Gandhi.

90. He has stated that he does not possess any written proof of regarding the ownership of Shanaishwar Publicity of Darandale. As indicated, Dhamale has stated that Darandale is the Proprietor of Shanaishwar Publicity and this would be evident from an undisputed letter at Exh. 182 (xerox copy) wherein Sopanrao Darandale is shown as the reporter for several papers including Sarwamat, Kesari Lokmat, Nawa Maratha, Gaonkari, Lokyug, Samachar, Sakal and other papers. The Letter Head also shows that Shanaishwar Publicity is under the control of Sopan Darandale. It will have to be stated that even the respondent No. 1 has deposed that Shanaishwar Publicity belongs to Darandale, to which I shall come later. Chandekar has further deposed that Darandale has been given true report and that there was no occasion to have any incorrect reporting by Darandale. When being questioned on the report, he has stated that Exh. 102 is a complete report and that it bears the signature, which is a xerox signature of the original. Regarding the report, he has stated that the last three lines of the report at Exh. 102 are taken from that report and the lines are:-

"Vikhe, who is contesting election by buying men on the strength of money, must be shown his place."

91. He has stated that Darandale did not sign the xerox copy delivered to him at Exh. 102. Original bears his signature. He has been shown photographs Exhs. 99 and 100 wherein both Girish Kulkarni—reporter of Maharashtra Times and Sudhir Mehta—reporter—are together. So is the case in photograph Exh. 100 wherein Mehta and Girish Kulkarni are seen in the company of Annasaheb Hazare of Ralegaon Siddhi. He has denied that he attended the meeting of the reporters called by the petitioner after the election results. He has admitted that Annasaheb Parulekar was prosecuted for news but was acquitted. One prosecution is pending against the Editor of this paper for defamation. In his further cross-examination, he has stated that the report at Exh. 102 given to him by Darandale was not the detailed report of the meeting. The speeches by many of the speakers have not been incorporated. He admits that Daily Gaonkari published at Ahmednagar. It must be stated that respondent No. 1 acknowledges Chandekar and Kane as reported of respective papers.

92. This evidence is challenged on the ground that Chandekar is not the person who attended the meeting at Sonai. He simply prepared the news item on the basis of the report submitted by Darandale. According to the learned advocate for respondent No. 1, the report Exh. 102 is the xerox copy of the original report and there is no original signature of Darandale. It can not be lost sight of that Chandekar has deposed in many more terms that this report was submitted by Darandale and that the contents of the report were discussed by him with Darandale and Darandale still affirmed those contents to be the speech of respondent.

93. Now looking to the case law discussed above, it was incumbent on the petitioner to examine Darandale himself. Now so far as Darandale is concerned, the learned advocate for the petitioner has contended that Darandale is under the thumb of the respondent No. 1. There was, therefore, no propriety in examining him. On the other hand, respondent No. 1 should have examined him to dislodge this witness Chandekar and other witness Satish Pone whose paper report in Samachar is also based on the report of Sopan Darandale. He has contended that when such situation arises, a witness examined need not be disbelieved merely because the necessary formality including the report, is not gone through. If the situation is such that the reporter, who witnessed the meeting, could not be examined or would not support the case of the petitioner, then this infirmity by itself would not be enough to reject the testimony of Chandekar or for that purpose Kane, to whose evidence I shall come later. Now in the foregoing ruling, it has been laid down that the reporter who witnessed the meeting and who forwarded the report, should be examined but if the last formality cannot be complied with, the Supreme Court in A.I.R. 1970 S.C.

1500 in the case of Pratapsingh V/s. Hardayal Lal, has observed that :-

"If the witness is in the control of other party, the party requiring his attendance, can not be faulted for not examining that witness."

In para No. 49 of that judgment, the Court observed that :-

"Non examination of the witness is of no consequence."

In that case, one Surajmal who was responsible for several publications was not examined by appellant in regard to corrupt practices because he was under the thumb of the respondent and the Court, therefore, did not find fault for this lapse on the part of the appellant.

94. It would be, therefore, proper to turn to the evidence of respondent No. 1 at Exh. 328 in regard to the relationship between respondent No. 1 and Darandale. Although it was consistent attempt on the part of the respondent No. 1 to disown close relationship or acquaintance with Darandale, his further admissions betrays his stand. He has admitted that Darandale was present at the Sonai meeting. In para 24 of his evidence, he has admitted that he has known Sopan Darandale who is reporter. In photograph Exhs. 210, 211 and 212, Sopan Darandale is also seen along with Bhayyasaheb Deshmukh. In para 34 of his evidence, respondent No. 1 has stated that he knows Sopanrao Darandale as press reporter but Sopanrao has no concern with Mula Sahakari Sekhar Karkhana, of which respondent No. 1 is the founder member. But he admits that Darandale is a member of that Karkhana.

95. Sopan Darandale was also present at the interview given by respondent No. 1 in the Rest House at Nagar on 11-5-1991 to Girish Kulkarni. Although it was an interview, Sopan Darandale was present along with respondent No. 1 and this could not be without the close acquaintance. In para 48 respondent No. 1 has admitted that Sopan Darandale had also attended the meeting of the District Congress Committee at Nagar on 2-5-1991 along with Sudhir Mehta and Ramdas Dhamale. Sopan Darandale was also present on 3-5-1991 at the meeting at Nowasa. He admits that the report of the election meeting dt. 8-2-1990 was also given by Darandale. He also admits that Sopan Darandale is the Proprietor of Shanaishwar Advertisers of Publishers. Sopan Darandale also provided the report in Sarwamat paper Exh. A-43 dated 9-5-1989 in connection with the election meeting of the respondent No. 1. The advertisement at Exh. A-45 is also in respect of the respondent No. 1 given by Sopan Darandale in Kesari paper and Sarwamat at Exh. A-49 dated 12-5-1989. The wording of this report is supplied by Sopan Darandale.

96. Similarly report Exh. A-46 Lokmat dated 12-5-1989 is worded by Sopan Darandale and that is on the occasion of 50th birthday of respondent. Exh. A-47 and A-48 of Sarwamat paper respectively dated 12-5-1989 and 12-5-1986 are the felicitations given to respondent No. 1 and published by Shanaishwar Advertisers, obviously by Sopan Darandale. Shanaishwar Advertisers also gave advertisement Exh. A-50 and A-51 in Lokyug and kesari papers dated 27-4-1989. Exh. A-53 to A-57 in Gawkari, Sarwamat and kesari papers are given by Shanaishwar Advertisers. Although he deposed that he had made payments of these advertisements, he had admitted that the payment vouchers are sanctioned at the board meeting and undisputedly respondent No. 1 was on the Board of Directors of Mula Sugar Factory. Exhs. A-52 to A-58, A-59, A-60, A-61 and A-66 contained the names of the supporters which are edited by Sopan Darandale. So also in the article given by Balasaheb Tanpure vide Exh. A-69 Sarwamat dated 12-5-1985, it was also edited by Sopan Darandale. Sarwamat dated 15-6-1990 at Exh. A-70 by Machindra Patil was also published through Shanaishwar Advertisers. Although respondent No. 1 refused to categorically say that Shanaishwar Advertisers is owned by Sopan Darandale, the other evidence is enough to hold that Darandale owns and runs Shanaishwar Advertisers and that would be evident from the respondent's witness No. 3 Narendra Singh Hirasingh Chandel at Exh. 178 to whom I shall come later, who unequivocally states that Darandale runs Shanaishwar Publicity.

97. From the foregoing admissions given by respondent No. 1, it would be manifest that Sopan Darandale was rather the spokesman for respondent No. 1 and if in that background, Sopan Darandale is not examined, it cannot be said that the evidence of Chandekar that this report was given by Darandale and Darandale did reaffirm the correctness of the contents, on interrogation the report can not be thrown away. On the other hand, it can well be treated as a secondary evidence as suggested in *George Fernandes' case* (supra). The same remarks can be offered with regard to the evidence of Subhash Gopalkrishna Kane at Exh. 86. He is Editor of Samachar paper. He also published the news report at Exh. 87 in regard to Social meeting on the basis of the report of Sopan Darandale. He admits that portions marked A to A and B to B are the parts of the speeches delivered by respondent No. 1 and refused that he had added any portion to the news item. Darandale brought the report and Kane told Darandale that the speech was forceful to which Darandale said that the meeting was rigorous. The report by Darandale is to be found at Exh. 88 which is the xerox copy of the original.

98. He has stated that as the original was on the rice paper, which is a very thin paper and used up in printing, the same was not retained. The xerox copy was taken up as it was an important election meeting. He identified the signature of Darandale on Exh. 88. He has stated that the reporter's name is not always printed in the news item. He has been cross-examined on several portions and it is urged on behalf of respondent No. 1 that portions marked A to A, B to B and C to C are not in the original report. In his cross examination, he has stated that he was never prosecuted for this news item. This news was delivered by Darandale at Exh. 88 at 9 p.m. on 1-5-1991. It was the practice of Darandale to personally come down to the press and deliver the report. He admits that advertisements worth Rs. 40,000/- are given by the concerns of the petitioner but so is the case in relation to the advertisements given by respondent No. 1. He has admitted that Darandale is honest and gentle. Now the portions which are marked at A to A, B to B and C to C in Samachar Exh. 87 are in respect of the petitioner working as an engine driver of the field; B to B about sending Janata Dal candidate to Beed for Rs. 20 Lakhs; Rs. 50 Lakhs to its election fund. In that paper there is denial by petitioner about the allegations made by respondent No. 1. However, this seems to be erroneous because there are references to payment of Rs. 20 Lakhs for sending Janata Dal candidate to Beed; Rs. 50 Lakhs for election fund of Janata Dal and Rs. 3 crores for election. As indicated, Darandale could not be examined for the reasons stated as aforesaid.

99. Now assessing the evidence of Kane and Chandekar, it would be clear that both these persons are the responsible reporters of the papers and that the news items published in those papers do contain all those allegations. They have laid in many more words that Sopan Darandale personally came down to them and submitted the report, they prepared the xerox copy, retained them and sent the original for publication in the newspapers. Here is a case where Darandale has not been examined. Therefore, it would not be proper to reject the entire evidence solely on this infirmity of being "Hearsay", when it is pointed out and also proved that Darandale is the spokesman of respondent No. 1. In the case of *Pratapsingh*, it has been adequately adumbrated that in certain circumstances, this infirmity can be ignored. When the witness say that Darandale himself came down and submitted the report; when they further state that they questioned Darandale because of the seriousness of the news; it would be improper to reject the testimony only on the ground that Darandale has not been examined. It was beyond the control of the petitioner to examine a witness who was the spokesman for respondent No. 1. It is surprising that the news items have not been challenged by respondent No. 1 by openly contraverting the correctness by news item.

100 In AIR 1974 S.C. 405 in the case of *Boburao Paremore V/s. Govind and Others*, the Supreme Court observed that :—

"Mere publication of a report of a meeting in the local newspapers is not by itself sufficient to corroborate the testimony of the witness who deposed that

the impugned statement was made by a particular speaker at the meeting."

In this case, in para 85 of the above judgment, the Court has discussed the circumstances in which the above observations were made. In that case, the report against Jambuwantao Dhote appeared in Bhandara Times, which was critically disposed towards Dhote. That report contained allegations and imputations made by Dhote. Dhote himself had denied it. It was also found that the reporter, who attended the meeting, did not mention the above allegations. Notice was not given to Jambuwantao Dhote in respect of that statement. Again notice was given on behalf of Dhote to the printer, publisher and owner of Bhandara Times in respect of these false statements and for all these reasons, the Court refused to accept the newspaper item as the evidence.

101. It will have to be observed that in that case of *Koremore*, the Court did not stretch the proposition to the fact that the reporter who made the report, was not examined and that is why the report would not be accepted. The grounds on which the report was rejected are the grounds indicated above. In that background, I feel that the reports of Darandale which led to the news publications in Samachar at Exh. 87 and news report Exh. 101 in Daily Sakal can not be rejected in toto. That should be treated as secondary evidence. The respondent No. 1 could have obliterated all this impact by examining Darandale. That would have obliterated the necessity to contradict news items and would have rendered the evidence of Chandekar and Kane non-funus.

102. Now going to the evidence of P.W. 7 Sundamrao Vitthal Harkal at Exh. 75, Harkal has stated that he attended the meeting, which was held at Mula Public School. The meeting was fixed at 1.30 p.m. and started at about 3 p.m. The speeches went on for 45 minutes. Respondent No. 1 spoke that the independent candidate (the petitioner) got the support of Janata Dal on payment of Rs. 50 Lakhs; Rs. 20 Lakhs were paid to the Janata Dal candidate for withdrawing from Ahmednagar constituency and contesting from Beed. Respondent No. 1 also stated that Rs. 3 crores would be spent for election by the petitioner. The petitioner had collected a huge wealth by unfair means and the workers must accept that amount. Harkal further stated that the respondent No. 1 spoke about the petitioner having declared a rate of Rs. 25,000 for village level workers and Rs. 50,000 for taluka level workers. He also stated that there was no opposition from Janata Dal or B.J.P. and that the real challenge was posed by the petitioner.

103. He also spoke that the petitioner chose to contest from South because he could think that he could purchase the voters. He has stated that Raisa Shaikh—President of Municipality, also delivered the speech and thereafter he met the petitioner along with Andhav and acquainted him of the speech. In the cross examination, he has stated that it was not true that the meeting was fixed at 9 a.m. and that the meeting was over by 4.30 p.m. He had seen the fleet of 400 to 500 trucks near the meeting. He did see jeep vehicles. He went on motorcycle No. MVB 808 which belonged to Vijayshet Gandhi of Rastapur. He did not come across the speech that the amounts were to be paid to village level and taluka level workers. He did not see the new cycles. He has stated that as per notice Exh. 77, the meeting was called at 9 a.m. but it took place in the afternoon.

104. From the evidence of Harkal, it could be gathered that he is not under the influence of the petitioner. As a matter of fact, he is from Rastapur, Tq. Newasa. Indeed there is some slight contradiction in the timing given by Dhimal and Harkal, but the fact remains that the meeting started in the afternoon. Harkal had really no reason to tell the falsehood. His evidence is supported by various papers referred above.

105. Now dilating on the news reports in Gaonkari Exh. 81 dated 9-5-1991, there are clear allegations that the petitioner had paid Rs. 50 Lakhs to election fund of Janata Dal and that respondent No. 1 had stated that such dealings can

not be open dealings and that petitioner would not leave behind any evidence. It is necessary to observe that paper Exh. 81 is dated 9-5-1991 and according to Dhamale, the news came very late and, therefore, could not be reported to the paper. It was sent by post and it seems that initially it was reported on 9-5-1991. There was also allegation that the petitioner was to take out rally of 5000 cyclists. Now this report Exh. 81 refers to Sonai meeting held by respondent No. 1, the reply given by the petitioner and the stand taken by respondent No. 1 affirming his former allegations at District Congress Committee meeting, Nagar. It is a comprehensive report.

106. In Sakal Exh. 101, similar allegations appear that about Rs. 50 Lakhs paid to the Janata Dal election fund; Rs. 20 Lakhs to the Janata Dal candidate; Rs. 3 crores towards the election budget. In Samachar paper at Exh. 87, similar allegations are made with regard to Rs. 20 Lakhs and Rs. 50 Lakhs and Rs. 3 crores.

107. The learned advocate for respondent No. 1 has contended that all these allegations do not appear in all the papers. For this is small answer would be that the reporters do not invariably report all the news items. They highlight some of them; they drop some of them but the common inference that can be drawn is that respondent No. 1 had made allegations regarding payment to Janata Dal election fund; to the Janata Dal candidate by petitioner. He also reflected upon the total expenses of Rs. 3 crores to be incurred by the petitioner in this election. He also spoke about the rates for defecting workers.

108. As against this, the respondent has examined Narendrasingh Hirasingh Chandel at Ex. 178. He has stated that he holds the identity card of Nawa Maratha paper at Exh. 179 but the same is for the year 1991-92. He is the reporter for Nawa Maratha at Sonai. He has stated that at the meeting at Sonai, people were talking that Janata Dal candidate had withdrawn and that there was some political move behind that. They also discussed that moneys were being distributed amongst the workers. They referred to the petitioner in this behalf. He has stated that the meeting started at 11 a.m. or even late but he has stated that his report was not published but the report of Darandale at Exh. 181 was published in Nawa Maratha. Now it may be pertinent to note that even in this report, there is a reference to the petitioner being the engine driver in 1962; that petitioner was entering election fray by purchasing voters on the strength of money. There was also advice that the workers should accept the amount which, although sinful, and the petitioner should be shown his place.

109. Now if this report is studied, it would be seen that there are allegations against the petitioner that he wanted to purchase the voters on the strength of money. Chandel attended Newasa meeting also to which I shall come later while discussing that meeting. Chandel has deposed that the petitioner did not utter those allegations. He has also stated that Sharad Pawar at Newasa did not utter the offending remarks as stated by petitioner. According to him, Ramdas Dhamale or Padmabhushan Deshpande were not present at this Sonai meeting. However, in the cross examination, he has stated that ordinarily the reporters would send the report about the news only after verification of the truth thereof. Darnadale is a reporter and also the owner of Shanaishwar Advertisers. He has permitted Darandale to cultivate his land on crop share basis.

110. The letter Exh. 182 referred above is on the letter head of Shanaishwar Prasadhdhi. He states that this letter is not signed by Darandale. He admits that he is in a photograph Exh. 183 and 184 wherein along with late Yeshwantrao Chavan, respondent No. 1 and this witness was present. As a matter of fact, photograph Exh. 183 depicts Chavan taking food and Chandel present there along with respondent No. 1. This would show that Chandel is intimately connected with respondent No. 1. He has admitted that various persons were present at Sonai meeting. However he has gone to the extent of saying that "Payment for soliciting votes would not amount to 'Corrupt Practice'".

This admission alone is enough to throw away his testimony. In the meeting he was seen sitting along with Darandale, who was taking notes. He admits that the allegations which appear in the paper were defamatory of the petitioner. He admits that in Sakal Exh. 101, Kesari Exh. 80, Samachar Exh. 87, the details about the speeches are more than in Nawa Maratha Exh. 181 although they are from the very meeting. He admits that there was no denial of these reports by respondent No. 1 or any of his workers. Although Chandel himself is a reporter, he did not follow up those offending reports by writing to the newspaper editors. He himself did not meet respondent No. 1 to convey to him that the allegations made in the above papers were false.

111. He has denied that respondent No. 1 spoke that a person who was an engine driver in 1962 has become powerful on the basis of his wealth. He has denied the offending statements purported to have been made by respondent No. 1. He admits that he had written the article Exh. 185 dated 23-6-1992 in Lokyug. On going through this article, it is seen that he discusses the various implications that may ensue in the event of this election being set aside and the notice under section 99 against Pawar is made absolute. It would be further pertinent to note that the said article is a comprehensive article. There are some references to Churahat Lottery Scandal involving Arjun Singh, Union Minister for Human Resources. Several other predictions have been discussed in this article. Chandel has not been able to understand as to what is Chunhat Lottery Scandal and it has been rightly suggested by the learned advocate for the petitioner that the article Exh. 185 is written by some other person behind the curtain. He has denied several statements purported to have been made either by Govindrao Adik, Sharad Pawar and other speakers namely Kolhe in the meeting at Newasa. He is the member of Sonai Multipurpose Society, Sonai of which the brother of respondent No. 1 is the Chairman and that is why loan amounts are not recovered from him.

112. All these facets of the evidence of Chandel go to show that Chandel does not come forth with clean hands. He is a person who is prepared to swallow the idea that purchase of votes would not tantamount to corrupt practice and if in that background, he is unmindful of the allegations made by respondent No. 1 at Sonai meeting, it can not be said that Chandel would establish the claim of the respondent No. 1 that no allegations were made. His article at Exh. 185 would also reflect upon one important aspect and that is he acts as proxy and not as a primary. Even he does not contradict offending reports published in above newspapers.

113. From the aforesaid discussion, it will have to be concluded that respondent No. 1 did make the allegations that petitioner paid Rs. 50 Lakhs to the Janata Dal and Rs. 20 Lakhs to Janta Dal candidate Kolse Patil for withdrawing from Nagat and for contesting from Beed. He was to pay Rs. 25,000/- to village level workers and Rs. 50,000/- to taluka level workers. He was to spend Rs. 3 crores for his election. These are the allegations which are made out at Sonai meeting. Although for a moment, the evidence of Kane and Chandel is not taken into consideration, the evidence of Dhamale and Harkal would clearly establish the above allegations. These allegations clearly reflect upon the personal character and conduct of the petitioner. The petitioner is described as a person who does not desire the election propaganda to go in healthy manner. He was out to spend huge amount to acquire success. These allegations regarding Rs. 3 crores for election is itself a corrupt practice because the outer limit of the amount is stipulated under the R. P. Act and the Rules made thereunder.

DISTRICT CONGRESS COMMITTEE MEETING DATED 2-5-1991 AT AHMEDNAGAR

114. By amendment to para 10 of the petition, the date 2-5-1991 was inserted instead of 1-5-1991 in regard to the

District Congress Committee meeting held at Sonai soon after the meeting at Sonai on 30-4-1991. This fact was more obvious in view of the paper reports and later on the witnesses for the respondent No. 1 have also stated that the said meeting took place on 2nd May, 1991 in the evening hours. Now so far as this meeting is concerned, the petitioner has contended that the petitioner received Sakal and Gaonkari papers reporting the news of 30th April, 1991 at Sonai. The petitioner publicly called upon respondent No. 1 to prove the charges or otherwise to withdraw from the election. It may be remembered that those charges related to the payment to Janata Dal, the payment of B. G. Kolse Patil for withdrawing from Nagar and to contest from Beed, payments to village and taluka level workers, cycle rally etc. This news was reported in the newspaper Lokmat on 3-5-1991. However, the respondent No. 1 came to know about the allegations and reiterated the allegations in the meeting of the District Congress Committee workers held in the District Congress Committee office at Nagar on 2nd May, 1991.

115. He stated that the petitioner would not carry out these transactions openly. He would not implement those transactions in photo session nor would he leave behind any evidence in the nature of stamped document about these transactions. This meeting was attended by Kailas Shivajirao Pathare of Hatampura, Ahmednagar and Advocate Shailesh Dethle of Nagai. The other witnesses present were Suresh Appasaheb, Advocate, Nalegaon and these witnesses reported the statements made by respondent No. 1 to the petitioner. The petitioner stated that these statements related to the personal character and conduct of the petitioner and even the respondent No. 1 knows them to be false. The extracts of the newspaper reports are produced at Exh. D.

116. Arun Sonde on behalf of Daily Lokmat, Padmabhushan Deshpande on behalf of Daily Nagar Kesari and Ramdas Dhamaale on behalf of Gaonkari reported these speeches in the papers, which would be referred hereafter. Even in Daily Gaonkari dated 9-5-1991, the details of this speech have been published. The first respondent never disputed the correctness of these statements and has not published any statement in any of the newspapers stating that his speech was not correctly reported. The respondent No. 1 in that meeting also uttered that a sum of Rs. 5,000/- had been sent on behalf of the petitioner for constructing Chawadies in Ganganagar area of Newasa tehsil. There was also statement that petitioner was going to have a bicycle rally of 5000 strong persons and that those cycles were to be permanently gifted to the participants. This was published in Lokmat dated 3rd May, 1991; Daily Gaonkari dated 9-5-1991. The petitioner has emphatically stated that these statements touched upon the personal character and conduct of the petitioner and have prejudiced the prospects of election of petitioner.

117. Respondent No. 1 in his written statement at Exh. 5 has stated that neither Pathare nor Dethle attended that meeting. He also pleaded ignorance regarding the petitioner calling upon him to prove the charges he had made at Sonai meeting or to withdraw from the election. He has also pleaded ignorance about the Lokmat news item dated 3-5-91. According to him, the meeting of Congress (I) workers was held in the District Congress Committee office at Ahmednagar on 2-5-1991 and that respondent No. 1 did not make any allegations in his speech touching upon the personal character and conduct of the petitioner. He never uttered about the payment to Janata Dal party; payment to Janata Dal candidate or allurements to the defecting workers by the petitioner. The news items are wholly false and incorrect and imaginary. The respondent No. 1 never read those reports and, therefore, there was no question of disputing the correctness thereof. There was also no reference to petitioner paying Rs. 5,000/- for constructing Chawadi at Ganganagar in Newasa Tehsil nor the rally of 5000 cyclists. This would, therefore, clearly show that respondent No. 1 has categorically denied to have made any such statements touching upon the personal character and conduct of the petitioner.

118. Now in the evidence of petitioner, at Exh. 15, he has stated that he came to know about the speeches by respondent No. 1 from Advocate Dethle and Pathare. He also read the news items in the various papers, to the details of which I shall come later. Suffice it to say at this stage that the petitioner has relied on the evidence of the above two witnesses and also the evidence of the press reporters. As against this,

the respondent No. 1 in his evidence at Exh. 328 has contended that (the relevant contentions are to be found at pages 28 onwards), the meeting of Congress workers was held at District Congress Committee office on 2-5-1991 between 5 to 5.30 p.m. Male and female workers had attended that meeting. The Congress workers gave him information that the workers of the petitioner told them that the petitioner was to provide sports material to the sports clubs. He was also to provide liquor to the hutment dwellers. The petitioner was thus sent upon supplying money for all the purposes catch the voters. All this information given by the workers to respondent No. 1, both at Sonai and at Ahmednagar, rather gave an impression to the respondent No. 1 that the petitioner was to practice corrupt practice. He, therefore, told the workers to face the situation boldly and not to become nervous over such rumours.

119. He further deposed that he advised the workers to keep watch on the situation. Aziz Ambekar and Dadabhau Kalamkar had also attended that meeting on 2-5-1991. He claimed that he did not read the issue of Kesari at Exh. 105 dated 3-5-1991. He did not make any offending speeches at the portions A to A and B to B. He also never uttered portion D to D in Exh. 105 nor portion C to C. He has also disowned the newspaper report of Gaonkari dated 9-5-1991 at Exh. 88. He has likewise denied other portions which have been relied upon by the petitioner. He also did not utter the captioned portions at Exhs. 97 Lokmat. Briefly stated, he has raised a defence that the workers were floating rumours or in the alternative, the workers were worried about the proposed corrupt practices to be adopted by the petitioner and it is in that context that the petitioner spoke that they should not be swayed away by those rumours. Even Aziz Ambekar and Kalamkar supported this evidence. It would be seen that in the written statement, no such defence has been taken that the respondent No. 1 became anxious at the rumours that were discussed by congress (I) workers.

120. On going through the evidence, it would be found that the evidence which has bearing on this meeting dated 2-5-1991 is the evidence of PW-13 Arun Prabhakar-rao Sondel—reporter of Lokmat at Exh. 95; PW-14 Padmabhushan Deshpande at Exh. 104; PW-9 Ramdas Prabhakar-rao Dhamaale at Exh. 79; PW-4 Shailesh Sunderrao Dethle at Exh. 17; PW-5 Kailas Shivajirao Pathare at Exh. 71; RW-2 respondent witness) Sudhir Kesarchand Mehta Mehta at Exh. 152; RW-7 Dadabhau Dashraath Kalamkar at Exh. 232; R.W. 5 Abdul Aziz Ambekar at Exh. 208. PW-9 Ramdas Prabhakar-rao Dhamaale is the reporter of Gaonkari. He has also covered this meeting at Nagar on 2-5-1991. He has stated that at the Nagar meeting, respondent No. 1 had spoken that the petitioner had paid Rs. 50 Lakhs to Janata Dal for securing its support and that this was denied by the petitioner and hence respondent No. 1 spoke that such payment was not made in photo session or on stamped papers and that the petitioner would not kept behind proof about such transaction. The respondent No. 1 also spoke that the petitioner had paid Rs. 5,000/- for repairs of Chawadies at Newasa and this was, therefore, an opportunity for all the villagers to get their Chawadies and temples repaired. Respondent No. 1 further spoke that the petitioner was to distribute cycles to the participants in cycle rally of 5000 cyclists. He has stated that he reported this incident in Daily Gaonkari at Exh. 81 dated 9-5-1991. He has also stated that the initial report appeared in Gaonkari on 3-5-1991 at Exh. 33.

121. On comparing the report at Exh. 33 and 81, it would be manifest that the report of 9-5-1991 contains more details whereas report Exh. 33 is a curtailed version. Now on perusal of Exh. 33, it can be easily gathered that the report simply relates to the holding of District Congress Committee meeting and the resolve of respondent No. 1 that he would win the election with over whelming majority. He had stated that the party was backing him and that the workers must set upon the campaign to defeat the respondent No. 1. On perusal of this report, it is, therefore, clear that it does not contain any statement which touches upon the personal character and conduct of the respondent No. 1. However, when one looks at the report at Exh. 81 in Gaonkari dated 9-5-1991, one would be convinced that it contains more details and they can be enumerated as follows. The petitioner had paid Rs. 50 lakhs for securing the support of Janata Dal and in that regard respondent No. 1 had spoken at Sonai meeting. He further spoke that the petitioner would not carry out such transactions in photo session or would not record such transactions on stamped papers.

122. However, Exh. 81 further contains that the petitioner was to take out a rally of 5000 cyclists and that the cycles were to be given to the participants. Respondents had exhorted his workers to secure those cycles by participating the rally but vote for the Congress. Swatnra Sainik Rambhau Nisal was the president. The other persons present were Aziz Amekar, Dadabhau Kalmkar and others. From this report, one could notice that three allegations were made and they are :-

- (1) That the petitioner had paid Rs. 50 Lakhs to Janata Dal for securing its support;
- (2) That he had sent Rs. 5,000/- for repairs of Chawadi at Gunganagar, Tq. Newasa; and
- (3) That he was to take out cycle rally of 5000 strong cyclists and distribute the cycles to the participants.

It would be thus clear that there is difference between the contents of Exh. 33 and 81. Ramdas Dhamale has explanation to offer. He has stated that the meeting was over by 7.30 p.m. and by that time, the skeleton of the information had to be passed on teleprinter. The detailed report was sent by taxi to Nasik. Gaonkari has its publication and printing at Nasik. He has stated that it was the discretion of Nasik office to publish the news sent by him and thus there was a delay.

123. It would be clear that in the report Exh. 81, the details appeared about the corrupt practices alleged by respondent No. 1. It would be necessary to observe that the reporter would not forward such false news because that may lead him in prosecution. The fact that Dhamale still stands by that news item at Exh. 81 would go a long way to show that Dhamale had given the report as indicated in Exh. 81. It is unlikely that Dhamale would act at the behest of the petitioner on such a delicate issue which may ultimately involve him in the court proceedings. His explanation, therefore, is that as the time had expired for transmission of news, he could not send the details. He sent the details of the news by taxi to Nasik and found that the report appeared in Exh. 81. It would be seen that this report is of the speech rendered by respondent No. 1 at District Congress Committee office at Nagar. If therefore, there is delay in publication of the news, it can not be said that this news is false. Even witness Mehta for respondent No. 1 has admitted that reports are delayed when time for their despatch is over.

124. In the foregoing paragraphs, it has been observed that Dhamale is a reliable reporter. Even respondent No. 1 has stated that Dhamale is a reporter and in that light, the fact remains that he sent the report. He has been subjected to detailed cross-examination. The observations about his credibility have already been discussed. He has been held to be reliable witness and, I, therefore, feel that Exh. 81 is the true reproduction of the report sent by Dhamale in connection with the District Congress Committee meeting at Nagar. The delay which has been assailed by respondent can not prove to be fatal and this is borne out by the contemporaneous report in other newspaper publications to which I shall pass on immediately.

125. P.W. 13 Arun Prabhakar Rao Sonde at Exh. 95 claims to be the reporter of Lokmat. He has stated that he had only two members in his office at Nagar at the relevant time and hence he himself used to cover some of the meetings. At some other meeting, he used to depute his subordinate but so far as the District Congress Committee meeting is concerned, he attended the same on 2-5-1991. According to him, the District Congress Committee office is at a distance of 3 minutes' walk from his office. He reached that place at about 6 p.m. The beds were provided for the speakers but there was also provision for microphone. He took a seat of 30 'to 40' away from the speakers and he could clearly hear the speech rendered by respondent No. 1. Respondent No. 1 was probably the last speaker. He himself started taking notes but soon found that Darandale was present. He noticed that Darandale was taking notes. Therefore, he abandoned the idea of taking notes himself. Darandale thereafter came to his office and submitted the report at Exh. 96. The report was signed by Darandale in his presence. He has seen Darandale putting signature on Exh. 96.

126. On going through the report, he found that the report contained the speech which was rendered by respondent No. 1 at the above meeting. This speech was in the nature of reaffirmation of the allegations which the respondent No. 1 had made against the petitioner at Sonai meeting. Regarding the allegations, he has stated that the respondent had referred to the offer of Rs. 50 Lakhs by the petitioner. Petitioner was also to distribute cycles and likewise he was to carry out repairs to Chawadies and temples. Respondent No. 1 also advised his workers to participate in the rally and obtain cycles for themselves. For this purpose, the report is in Lokmat at Exh. 97. The said Lokmat is dated 3-5-1991 and on perusal of the same, it would be found that respondent No. 1 spoke about petitioner having given Rs. 50 Lakhs to Janata Dal; Rs. 5,000/- for repairs of Chawadies in Newasa tehsil and cycle rally to be taken out by the petitioner. The number of cycles was 5000. It may be stated that in Exh. 97, there is also the clarification by petitioner that he had never paid Rs. 50 Lakhs to Janata Dal.

127. In the cross-examination, Sonde has stated that Darandale was the reporter and Darandale was under his control. He referred to other speeches made by Ghule and others. The circulation of Lokmat is about 7000 to 8000 in Nagar. He has identified the signature of Darandale on report Exh. 96. He has also testified to the clarification given by the petitioner as indicated above. He has admitted that there is no reference to payment of Rs. 20 Lakhs to Kolse Patil by the petitioner. He has denied that he did not attend the meeting and that the report Exh. 96 is not the report of Darandale. He did not attend the meeting called by respondent No. 1 after election possibly for felicitating the reporters. He admits that he did not preserve the notes which he had taken. Normally the notes are destroyed after the report is published. According to him, Sopan Darandale has been the reporter of Lokmat since 1980. Sopan Darandale is reported to be a straight forward person. He is also trustworthy and honest. He has stated that he knew Raisa Shaikh. However he did not notice other reporters, publishers etc.

128. He admits that the report at Exh. 97 is not the verbatim report of the speeches made by the speakers. He has also admitted that the clarification given by the petitioner in Lokmat Exh. 97 relates only to Rs. 50 Lakhs and nothing beyond. Now in this connection, it will have to be observed that the petitioner had made complaints to the Election Commissioner in regard to all the allegations levelled by respondent No. 1 against him and the copy of the said letter Exh. B-85 has been served on respondent and the same is not disputed. From the evidence of Arun Sonde, it would be seen that he also witnessed and heard the speeches rendered by respondent No. 1. Darandale was present and he, therefore, sent for publication the notes of Darandale. Darandale signed in his presence. He has stated that report of Darandale contained all the details about the speech of respondent No. 1. There was nothing new in that report and I, therefore, feel that Sonde can not be discarded on any count. It is unlikely that he would not have attended the meeting at Nagar. He is B.Com. M.B.A. and has been working as Sub-Editor of Lokmat at Nagar. One can not be, therefore, impressed by an allegation that he is under the thumb of the petitioner. After all, when a reporter makes a report which ultimately may involve that reporter in criminal prosecution in case it is found untrue, the said reporter would not act rashly in giving publication to false report. I, therefore, hold that the evidence of Sonde must also be accepted.

129. The next witness PW-14 Pandmabhusan Deshpande at Exh. 104 is the reporter for Nagar Kesari. He is B.A. and has appeared for M.A. His father has been the reporter for last several years both for Gaonkari and Pudhari. Pudhari is published from Bombay. He has stated that he had covered the meeting of 2-5-1991 at District Congress Committee office. The meeting was held at about 5.30 p.m. The hall was full of persons. Microphone was also provided. He was sitting on the rear side because he had gone late but he could clearly hear the speech of respondent No. 1. He made the report in Kesari which is at Exh. 105. Regarding the details he has stated that the respondent No. 1 spoke that petitioner had paid Rs. 50 Lakhs to Janata Dal for getting its ticket. He further spoke that the petitioner was to take out rally of 5000 cyclists. He was also to spend for repairs of Chawadies. The petitioner has challenged

these allegations and in reasons thereof, the respondent No. 1 had reaffirmed these allegations and had spoken that such deals are not done in photo session or on documents. There was also reference to cycle rally and distribution of cycles to the participants. Deshpande admits that the report at Exh. 105 in Kesari is correct.

130. He also covered the meeting at Newasa on 3-5-1991 to which I shall come later while discussing the meeting at Nawasan. On perusal of Exh. 105 Kesari dated 3-5-1991, would be found that the respondent No. 1 has spoken about Rs. 50 Lakhs given by the petitioner to Janata Dal. He also spoke that petitioner was to spend for repairs of Chawadies and temples and that the villagers must get their Chawadies and temples repaired. There was also reference to 5000 cycles to be distributed to the participants. It would be, therefore evident that the allegations made by respondent No. 1 were touching upon the personal character and conduct of the petitioner. Deshpande admits that the circulation of that paper is about 14000 to 15000 copies. In the cross examination, he denies to have any connection with B.J.P. He admits that Madhukar Deshpande is the reporter of Newasa. But this witness also covered the meeting at Newasa. At Nagar, there were ladies present. According to him, Raisa Shaikh was not present. He did not hear that the cycle rally was taken out at any particular place. He has denied the suggestion that Sudhir Mehta attended this meeting. He admits that he had no talk about this meeting with anybody. He did not come across any person of his acquaintance at that meeting.

131. He has denied the suggestion that respondent No. 1 did not make any allegation. On perusal of the newspaper Kesari at Exh. 105, the allegations against the petitioner are clearly borne out and they are payment of Rs. 50 Lakhs to Janata Dal; distribution of cycles and funds supplied by the petitioner for repairs of Chawadies. In the cross examination of this witness, there is nothing to suggest that he is the partisan witness. Merely because he could not recognise Raisa Shaikh one can not come to the conclusion that this witness did not attend the meeting. Of course, respondent No. 1 has denied that the above reporters attended this meeting. This witness has denied the suggestion that respondent No. 1 was hearing the rumours about the corrupt practices by the petitioner. He has admitted that except the news report, there is no other evidence to show that he covered the meeting. The evidence of Deshpande impresses to be truthful and can not be rejected lightly.

132. The oral evidence comprises of Shailesh Sunderrao Dethle at Exh. 70 and Kailash Pathare at Exh. 71. Both of them had attended the meeting and had heard the imputations made by the respondent No. 1. However, when they refer to the payment of Rs. 50 Lakhs to Janata Dal, their evidence becomes suspicious. Indeed Kalamkar has admitted that Dethle, who is an advocate, is a Congress Councillor. But it can not be lost sight of that he had canvassed for Vikhe Patil—the petitioner in this petition. He is unable to say as to when he was enrolled as Congress member. He is also unable to give the size of the hall where the meeting was held. He was the secretary of Youth Congress. He went through Gaonkari paper at Exh. 33 which does not contain the allegations. He claims to have made the petitioner acquainted of the offending part of the speeches made by respondent No. 1. The fact that Dethle canvassed for petitioner, although a Congress member, would rather make him an interested witness. Similarly Pathare at Exh. 71 also claims to have heard about the allegations made by respondent No. 1 but in the cross examination, he establishes that he is related to Subhash Patil and Prakash Patil, who are in turn related to the wife of the petitioner. He had taken leave for attending this meeting which also seems unlikely. I, therefore, feel that it may not be safe to rely on the evidence of Dethle and Pathare.

INTERESTED WITNESSES

133. In the case of interested witnesses it has been the consistent approach of the Supreme Court to treat the so called witnesses at the elections as one way or the other interested witnesses. Normally the elections are participated by the sympathisers of the candidates and their outlook over the entire election affairs is a biased outlook and if they

choose to canvass the cause of their candidate, they try to lose balance and are unable to give out the dispassionate picture of the election. In 1985 (1) S.C.C. 91 in the case of Surendra Singh V/s. Hardayal Singh, the Supreme Court observed in unequivocal terms that the wisdom lies in rejecting the evidence of such witnesses, if the evidence appears to be interested or the evidence is of the party worker. The relevant observations can be noted as follows :—

“Merely on the statements of some of the witnesses, who are essentially party workers or supporters, of a charge of corrupt practice can not be taken as proof. Oral evidence particularly coming from the tainted sources can not form sole basis of corrupt practice.”

134. In 1984 (3) S.C.C. 346 in the case of A. Yunus Kunju V/s R. S. Unani and others, the Supreme Court observed :—

“Where the election is fought on party basis and there is sharp division of electorate on the basis of political parties workers at the election with party alignments would necessarily of political supporters of the respective candidates and when called as witnesses, they would support their stand, some times even though the same may be far from truth. In such circumstances, on the oral testimony of such witnesses, the charge of corrupt practice can not be said to have been established.”

The same caution is struck by the Supreme Court in its earlier judgment 1984 (3) S.C.C. 499 in the case of Mannohan Kaliya V/s Yash and Others in following words :—

“It is very difficult to prove charge of corrupt practice merely on the face of oral evidence because in election cases, it is very easy to get the help of interested witnesses but very difficult to prove charges of corrupt practices.”

Briefly stated, the ratio that can be deduced from the foregoing rulings can be worded as follows :—

“Unless the oral evidence about the corrupt practice is satisfactory, the Court should not rely on that evidence.”

It would be, therefore, safe to look for corroboration but even apart, the testimony of such witnesses has to be scrutinised with caution and if it stands the test of truth, then alone such evidence can be relied upon.

135. Now turning to the evidence of Sudhir Metha for respondent No. 1 at Exh. 152, it can be easily gathered that he is closely connected with respondent No. 1. Although he is the reporter of Dainik Gaonkari, he was working for Dainik Nagar Kesari during the election period. He claims to have remained present at the District Congress Committee meeting on 2-5-1991. Regarding the meeting, he has stated that when he attended, discussion was going on amongst Congress workers that petitioner was distributing cycles, dhoties, money etc. amongst the voters. The workers were anxious over these activities of the petitioner. They also apprehended that as the Jantaa Dal candidate had withdrawn, he must have been sufficiently paid by the petitioner. According to him, respondent No. 1 did not utter anything touching upon the petitioner's corrupt practices. Mehta also attended Newasa meeting and has stated that neither the respondent No. 1 nor Shriad Pawar delivered any speech touching upon the personal character and conduct of the petitioner. The Chief Minister spoke about the national problems and the frequent elections.

136. Mehta also attended the interview dated 10-5-1991 at Government Circuit House by Girish Kulkarni of Maharashtra Times of the respondent No. 1. There also he did not hear anything which could touch upon the personal character and conduct of the petitioner. However, in the cross examination he has stated that he was in Nawa Maratha before joining Kesari on 10-6-1991 as a regular employee. Nawa Maratha is the paper of Subhash Gundecha. He is also the active worker of Congress. He runs Indira Grievance Cell and Aid. He has been the follower of Abasaheb Nimhalkar—the Congress (I) leader. He was also holding the post of Youth Congress and was appointed as the Member of the

Divisional Railway Users' Committee. He claims to be the well wisher of the Congress (I). He has admitted that in letter Exh. 155, respondent No. 1 backed him in the Municipal election. Mehta is also the Member of Telephone Users' Committee. He is aware that the papers could not be published without registration but he has been doing so in regard to his paper. He also disposed of the plot of land given to him at subsidised rate to M.B. Plastics. He was allotted the plot for his printing press but without starting the printing press, he disposed of the land, possibly at higher rate. He was also present at the thanks giving function held by respondent No. 1 where the press reporters were present. As a matter of fact, Mehta had issued that circular. The photographs at Exhs. 158, 155 and 159 clearly show that Mehta was present at the function and that the respondent No. 1 was the chief guest at that meeting.

137. In the letter Exh. 165, he is shown as the Chief of Publicity, District Congress Committee. Surprisingly, his news report of the District Congress Committee meeting was not published. In the photographs Exhs. 170 and 171, he is not found with his usual diary and pen and this would, therefore, show that he is the close associate of congress party and did not attend the meeting as the reporter. His performance was not good as a reporter and hence he was relieved from the position of reporter in Kesari by letter Exh. 172. He has stated that Padmabhushan Deshpande did not attend District Congress Committee meeting but the report of Deshpande was published whereas his own report was not published. But Mehta also admits that he was allotted the work of covering the meetings addressed by Gunjal and Shankarrao Kale in North Nagar and Shrekar in the South. It would, therefore, be obvious that Mehta had really no reason to prepare the notes of speech delivered by respondent No. 1 at District Congress Committee meeting, Nagar. He admits that the papers Exhs. 133 Gaonkari; Exh. 97 Lokmat and Exh. 107 Kesari contained the report about the Newasa meeting. He did not draw the attention of the Editors about the incorrect reports. He did not file objections in writing. He even did not write to Raisa Shaikh—President of District Congress Committee or even the Chief Minister, who is shown to have made the offending speeches. Likewise he has admitted that he did not come across any statement by the party complaining that the speeches reported in the above papers were false. Mehta knew that this was serious.

138. He has also admitted that in none of those papers, it was reported that the workers of Congress were complaining about the activities of the petitioner. He is unable to recollect about the speech of Chief Minister in connection with the daughter-in-law regard to the petitioner nor regarding the Ram Janma Bhumi. He has no animosity against Padmabhushan Deshpande or even Neurkar. He is unable to say as to whether portion I to I was spoken by Sharad Pawar in Exh. 135. He published the report Exh. 175 in Lokvug but he did not give the report for publication in other papers. According to him Girish Kulkarni posed the questions about Vodka project. He never posed the questions about the corrupt practices by the petitioner. Portion marked B to B has been admitted whereas portion C to C in Maharashtra Times Exh. 90 was not admitted. Now to this aspect, I shall come later while discussing the meeting at Newasa on 3-5-1991 and interview dated 10-5-1991. Suffice it to say at this stage that Mehta, on no reckoning, can be called as disinterested witness.

139. His evidence can not, therefore, be accepted because he is interested in the election of respondent No. 1. As stated, Mehta is connected with congress long since. His performance as reporter is not at all satisfactory. He is to be found in various photographs with the respondent No. 1 and if in that light, Mehta chooses to deny the speeches by respondent No. 1, it can not be said that those speeches are disproved. Even respondent No. 1 has admitted acquaintance with Mehta. When Mehta appears in several photographs along with respondent No. 1, who is the Member of Parliament, it can be safely assumed that Mehta has intimacy with the respondent No. 1. Mehta will have, therefore, to be treated as an interested witness.

140. Abdul Aziz Ambekar at Exh. 208 has stated that he is a Professor in Ahmednagar College for the last 12 years. He has obtained Ph.D. from Poona University and his thesis was "Philosophical Thoughts Reflected In Deccan

Literature With Special Reference to Sufism". He has also done his M.A. in Hindi and Urdu Persian. He has been teaching Hindi philosophy in the college at Ahmednagar. He also published various articles in various journals at Delhi, Calcutta, Rampur and Ahmednagar. He also participated in several workshops and conferences. He has, with the help of N.S.S. students set up a pipeline of 2 kms. for providing amenities to Lepors and Rehabilitation Centre for Lepers. He is a co-opted trustee of Misger Trust of Tambatkar community (O.B.C.). He has been the resource person in Training Oriented Centre for N.S.S. He is also Special Executive Magistrate and a leading Member of his community. Likewise, he is also a Member of Boards of Studies of Poona University and is associated with Maharashtra Federation of Secondary Teacher. He clearly admits that he was been associated with Congress for the last several years. He was also the President of Youth Congress. He is very positive on the fact that in the Parliamentary elections of 1984, 1989 and 1990, he had canvassed for congress nominees, both from Kapargaon and South Nagar constituencies. He had also canvassed for the petitioner as a Congress (I) candidate. He claims to have been attended Sonai meeting on 30-4-1991 in response to the invitation at Exh. 208. He attended the meeting at Mula Public School and there was a talk about the corrupt practices by the petitioner. The meeting was attended by Ramnath Wagh, Madutirao Ghule and others. There was anxiety amongst the workers about the massive deployment of wealth by the petitioner. Photographs Exhs. 210 and 211 are in respect of Sonai meeting. Bhayyasaheb Deshmukh was also seen in the above photograph along with Raisa Shaikh. Respondent No. 1 spoke for 15 to 20 minutes in that meeting.

141. Now so far as the District Congress Committee meeting dated 2-5-1991 is concerned, he has deposed that the same rumours about allurements by the petitioner were floating around. The said meeting was presided over by Rambhau Nisal. Several speakers participated that meeting and advised the workers to work vigorously. There was criticism against the petitioner that he was contesting as reel candidate. According to Ambekar, the petitioner possessed several tactics and one of them was to keep the press pleased. He used to offer assistance to the press reporters and further used to supply advertisements and provide vehicles also for the reporters. He has cited Maharashtra Times at Exh. 213 in regard to the petitioner and this advertisement relates to the highlights of the achievements made by the petitioner. In the cross examination, he has stated that he has been working for congress for the last 25 years and for last about 7 years, he has been the Secretary of the District Congress Committee. He has been in the college with respondent No. 1. They were working as President and Vice-President of Youth Congress between 1974 to 1977. He knows respondent No. 1 since 1975 but has denied close acquaintance with respondent No. 1. He has been following Nimbalkar and respondent No. 1 in regard to the political parties. Once they were with Congress (S) at other time with Congress (I).

142. So far as his attitude towards the petitioner is concerned, he has stated that when Raisa Shaikh was made the President of Distt. Congress Committee at the behest of petitioner, he had expressed his disappointment vide Nawa Maratha paper Exh. 215 and Samachar Exh. 216 dated 26-8-1989. This would be, therefore, a clear reason for Aziz Ambekar to depose against the petitioner. The disappointment expressed by Ambekar is to be found in Kesari paper Exh. 217 dated 1-9-1989.

143. Coming to the college achievements, he has stated that although he has been working as the Professor for the last 12 years, he has not been yet crossed the efficiency bar. His extra curricular activities noted above were undertaken with the purpose of crossing the efficiency bar but he could not cross the efficiency bar for 12 years. He was declared as the ideal teacher when respondent No. 1 was the President of Zilla Parishad, Nagar. This would be contrary to the fact that Ambekar could not even cross his efficiency bar and, therefore, the above award was nothing but the uncalled for endowment by respondent No. 1. He admits the reports in Sakal Exh. 111, Gaonkari Exh. 80, Samachar Exh. 87, Nawa Maratha Exh. 181. He admits that he has been reading the news items during the election period from time to time. He also felt that those publication were serious and likely to involve the respondent No. 1 in some legal proceedings

and although according to him, the speeches were falsely reported, he did not choose to make complaint to any responsible officer. This would, therefore, go a long way to show that Aziz Ambekar did not complain because the reports were true.

144. He denies those reports because he is closely associated with the respondent No. 1. In that light of the matter, the evidence of Aziz Ambekar can not be relied upon. From the evidence of Ambekar, therefore, it can be said that the respondent No. 1 must also be aware of those advertisements. If respondent No. 1 was not reading the newspapers, at least the workers like Ambekar and Mehta would certainly inform respondent No. 1 about the news publications. The fact however, remains that at no stage, respondent No. 1 made complaint to the Editors of various papers in regard to the allegations against the petitioner purported to have been made at the meetings at Sonai and District Congress Committee at Nagar. It may be stated that even for latter meetings, no complaints have been made.

145. RW-7 Dadabhau Kalamkar at Exh. 232 has been in politics since 1972. He was the active member of congress. He was F.A.M.L.A. from 1985 to 1989. All along he has been canvassing for congress. He belongs to Parner in Kerpargaon constituency. His speech dated 19-11-1980 vide Exh. 233 is meant for the petitioner. He had also met the Chief Minister for allotment of party nomination to the petitioner from South constituency. He attended the meeting on 2-5-1991 where, according to him, the workers were discussing about the allurements offered by the petitioner. The usual details indicated above were being discussed amongst the workers. There was also likelihood of Gundagiri at Nagar taluka. Ambekar and others were speaking in that behalf. Respondent No. 1, according to him, spoke that the workers must not get nervous. According to Kalamkar, reporters Arun Sonde, Padmabhushan Deshpande and Ramdas Dhamale had not attended the meeting. He did not see Dehe or Pathare. Only Sopanrao Darantale and Sudhir Mehta attended the meeting which lasted for one hour. Kalamkar also attended the meeting on 3-5-1991 at Newasa and is seen in photographs Exhs. 234, 235. To this, I shall come later while discussing Newasa meeting.

146. Now so far as Kalamkar is concerned, much can be said about him. He is a person who has purchased Maruti car from Indore, where admittedly that tax is less on motor vehicles. He does not really belong to Indore. As a Legislator. It was expected of him to lay down the high traditions of a Legislator. Legislator makes laws for the Government and if the same Legislator tries to escape from the penal provisions of law, namely payment of tax, that can hardly uplift the image of the Legislators. As a matter of fact, the Legislator must set an example to his followers about the highest traditions and exhibit exemplary behaviour but if the Legislator indulges in tax evasion by following dubious methods, that Legislator has to be branded as unworthy of his position or office. It will be also seen that Kalamkar has been fined twice for unauthorisedly removing sand. He admits that he had to pay fine on two occasions but his approach has been so casual that he never felt that he was wrong or that he was guilty. If that be so, Kalamkar does not put before the public an ideal image of a Legislator. Ultimately the future of the nation depends on the Parliamentarians and the Legislators. If they themselves choose the path of deviating from obligations that would make the future of the nation weak and disappointing. Kalamkar has been unfortunately indulging in undesirable activities of removing the earth unauthorisedly or purchasing the car from outside the State with a view to save the tax. The Legislator must have two fold aims; one welfare of public and the other strengthening the economic base of the State. His conduct disclosed from the above evidence is wholly inconsistent with the objectives pointed out as above.

147. Kalamkar has stated that he has been working with the congress. Neither respondent No. 1 nor any other speaker at the District Congress Committee meeting spoke about the petitioner indulging in corrupt practices. I, therefore, feel that Kalamkar can not advance the cause of respondent No. 1. On the other hand, the activities undertaken by him and dubious attempts to support respondent No. 1 would tilt the table in favour of petitioner. It would be, therefore,

futile to expect any true statement at the above meeting from Kalamkar. He is an interested and biased witness. He could stoop to anything to achieve his end and that would be manifest from the photographs produced at Exhs. 236 and 237. They were recently taken before the evidence of Kalamkar and Kalamkar thereby wanted to establish that asbestos cement sheets were provided by the petitioner for the temple during election time. It would be rather incomprehensible as to how the asbestos cement sheets recently provided would come within the scope of corrupt practice as envisaged under the R.P. Act. The evidence of Kalamkar must, therefore, be rejected outright. He does not impress as a truthful witness.

148. The learned advocate for the respondent No. 1 has contended that the evidence of the reporters do not inspire confidence. But the foregoing discussion would indicate that the petitioner has established that respondent No. 1 uttered that petitioner had paid Rs. 50 Lakhs to Janata Dal for its support; that petitioner had paid Rs. 5,000 for repairs of Chawadies in Newasa tahsil and that the petitioner was to take out cycle rally of 5000 cyclists and the cycles were to be distributed amongst the participants. There are exhortations by respondent No. 1 to his workers to participate the rally, to appropriate the cycles but to vote for congress. This would, therefore, certainly amount to corrupt practice under Section 123 (4) of the R.P. Act.

MEETING OF 3-5-1991 AT NEWASA BAZAR TAL.

149. This was the election meeting for respondent No. 1 and Kale—candidate from North Nagar constituency—held at Newasa Bazar Tal. According to the petitioner, at this meeting both respondent No. 1 and Sharad Pawar—the then Chief Minister—had reiterated the same allegations touching upon the personal character and conduct of the petitioner. They repeated all the allegations and the main idea behind these utterances was to lower down the reputation of petitioner amongst voters and to encourage the election prospects of respondent No. 1. They treated the petitioner as an "Outsider" or a foreigner or a stranger who wanted to win over the voters on the strength of wealth and money. It was sought to be painted that the petitioner was prepared to incur huge expenditure to win over the voters from this draught stricken area and petitioner has prayed that this amount to corrupt practice under section 123 (4) of the R.P. Act.

150. In this behalf, the petitioner in the Election Petition has contended that on 3-5-1991, respondent No. 1 and Sharad Pawar along with many other congress (I) leaders addressed a huge gathering of about 10000 to 12000 persons and repeated the charges, which have been referred hereinabove. Sharad Pawar on his part told the members of the audience that they should avail of this wealth, which was to flow back to them. The relevant extracts have been referred to and it is stated that Chandrabhan Bajirao, Popat Sambhaji Warkhede were present. This meeting was also attended by the reporter of Nagar Kesari—Padmabhushan Deshpande; reporter of Lokmat Vijay Bhandari; reporter of Sarwamat Pathade and reporter of Gaonkari Ramdas Dhamale.

151. Out of them, the petitioner has examined Padmabhushan Deshpande as witness No. 13, Ramdas Dhamale as witness No. 9 and the person who heard the speech Popat Sambhaji Warkhede as witness No. 8. Ramnath Gharute at Exh. 15 has been examined to prove the video cassette which he recorded at this meeting. This video cassette covers the entire meeting, according to Gharute. The same was seen in the presence and in the company of the advocates for the parties by the Court and it may be stated that there are two cassettes, out of which one is of 40 minutes' duration and the other is of 1 hour 45 minutes' duration. The longer one depicts the entire function. It must also be emphasised that during the course of this viewing of these both cassettes, none of the advocates from the side of respondent, could point out that the wording uttered and the movements of lips and tongues deferred so as to warrant an inference that there was dubbing. This is underscored with a view to examine some suggestions put up to Gharute that the incriminating portions in the speeches of respondent No. 1 and Sharad Pawar have been dubbed. To this aspect, I shall come later.

152. This evidence of the petitioner is sought to be countered by witness No. 1 Sadashiv Baburao Joshi of respondent

No. 1 and other witness Sudhir Mehta and Chandan. The witnesses for the respondent No. 1 have of course tried to depose that the offending parts of the speeches were never uttered by the respondent No. 1 and Sharad Pawar. It would be thus manifest that the evidence relevant for this meeting at Newasa Bazar Tal comprises of the evidence of PW-9 Ramdas Prabhakar Dhamale at Exh. 79 reporter of Gaonkari paper; PW-14 Padmabhushan Deshpande at Exh. 104 reporter of Nagar Kesari paper; PW-8 Popat Warkhade at Exh. 78 and PW-15 Ramnath Gharute at Exh. 119. As against this, the evidence on behalf of the respondent No. 1 is that of KW-7 Dadabhau Dashrath Kalamkar at Exh. 222; RW-1 Sadashiv Baburao Joshi at Exh. 134; RW-2 Narendra Singh Chandel at Exh. 178 and RW-3 Sudhir Mehat at Exh. 152. The important document which needs the detailed discussion is the transcription of those video cassettes at Exh. 74 and Exh. 135.

153. Going to the evidence of Ramdas Prabhakar Dhamale at Exh. 79, he has stated that he is the reporter of Gaonkari for last 4 years. At the relevant time, he was working for Dainik Gaonkari. Of course, he has switched over to another paper Lokmat only to better his prospects. He has assumed the post of Sub-Editor of Lokmat. He has deposed that he covered not only Sonai meeting dated 30-4-1991, District Congress Committee meeting dated 2-5-1991 but also this meeting dated 3-5-1991, at Newasa Bazar Tal. So far as Newasa Bazar Tal meeting is concerned, he has deposed that about 10000 persons were present. Chief Minister Sharad Pawar was the Chief guest of this meeting. Shankarrao Kojhe—the Guardian Minister of Nagar—was also present. Govindrao Adik, Chairman of S.T. Corporation; Dada Patil Shelke, M.L.A., Bhausaheb Thorat, Ex-M.L.A. and Chairman of the Sangamner Sugar Factory; respondent No. 1, Shankarrao Kale—the congress candidate from North Nagar constituency were present amongst the leading personalities for Congress (I). He has stated that he heard the entire speech and prepared the report which has been published in Gaonkari Exh. 82. He has further stated that Sharad Pawar spoke the portions in the news report at Exh. 82 which have been underlined by red ink. The synopsis of the speech of Sharad Pawar was that petitioner had left North constituency and came down to the famine affected area of South. Petitioner was trying to purchase the poor people of this area. However, he further stated that the poor people do not go in search of money and hence, their self respect should not be treated. Poor can not be purchased by money.

154. Pawar further spoke that he has no objection if the wealth is distributed. The petitioner can distribute cycles, dhoties, sarees and the voters should accept them. They should also get their temples and Chawadies repaired. Sharad Pawar also alluded to the Gundaism in the city. Dhamale has further stated that he did not report the speech of respondent No. 1 because firstly the speech of Chief Minister needed wider publicity and other speakers deserved secondary consideration. He has also maintained that this Gaonkari paper has circulation in the Nagar district. In the cross examination, as indicated in the foregoing paragraphs, nothing substantial has been elucidated to discard his testimony. It is sought to be urged that this witness does not remember other details but it can not be ignored that this is one of the meetings which were attended by Dhamale amongst several other meetings. If he forgets the details, which may not be impossible on account of lapse of time, it can not be said that Dhamale did not attend the meeting. The respondent No. 1 in his evidence at Exh. 328 admits that Ramdas Dhamale is the reporter of Gaonkari but so far as this meeting is concerned, Dhamale was not present. The credibility of Ramdas Dhamale has been discussed in the previous paragraphs and they need no repetition.

155. On going through the newspapers at Exh. 82 Gaonkari dated 4-5-1991, it would be seen that the portions marked A to A and B to B clearly reflected upon the personal character and conduct of the petitioner. The main thrust of the news item is that Sharad Pawar emphasised that the petitioner had abandoned morality and wanted to win the voters from the draught prone area only on the strength of wealth. He further stated that the petitioner was all along congress pondent No. 1. The candidate of B.I.P. had really no weight of 1991, he choose to contest as an independent candidate. He further stated that petitioner was under the false impression that the voters from draught prone South Nagar could

be purchased. The poor people do not roam for money and the petitioner should not try to test their self respect. He further stated that the petitioner raised several institutions on the strength of Congress but he cannot purchase voters on the strength of the wealth. Sharad Pawar did not object to the wealth being distributed; to the cycles, dhoties, sarees being distributed amongst the voters. He also indicated that the villagers must get their temples and Chawadies repaired. This, according to the petitioner, are the defamatory to the prestige of petitioner.

156. The other part of the speech relates to other national problems. Sharad Pawar indicated the poor country like India cannot afford elections at short intervals. There is also reference to other speakers. The long and short of newsreport in Gaonkari dated 4-5-1991 at Exh. 82 is that Sharad Pawar mounted the personal attack on the petitioner by stating that the petitioner had amassed huge wealth from the institutions started on the strength of Congress; that he wanted to purchase the voters on the strength of this wealth but the poor voters would not fall victim to the allurements by the petitioner. This is the minimum that can be inferred from the speech at Exh. 82. As indicated, Ramdas Dhamale has reported the speech after hearing the speech rendered by Sharad Pawar and respondent No. 1.

157. The next witness Padmabhushan Deshpande at Exh. 104 also attended this meeting and reported the speeches in Kesari at Exh. 106. He has stated that he heard the entire speech and reported in Kesari and the same was published in Kesari dated 4-5-1991 at Exh. 106. In the foregoing paragraphs, it is indicated that the evidence of Padmabhushan Deshpande also cannot be ignored in view of the fact that he had personally attended the meeting. He has stated that Sharad Pawar spoke about the money being distributed by petitioner amongst the poor voters. He also taunted petitioner that he should not have deviated against Congress. The real contest was between respondent No. 1 and the petitioner in that constituency. The B.J.P. candidate would never hope to win. He has admitted that the portions marked A to A and B to B were uttered by Sharad Pawar.

158. In the cross examination, it is sought to be suggested that he had not attended the meeting but there is no reason to disbelieve this witness. In Kesari paper Exh. 106, it is clearly stated that Sharad Pawar spoke that although the voters from South Nagar were poor persons, the petitioner must realise that the poor voters have self respect and that petitioner may break his elbow while digging the soft soil but may not succeed in purchasing the voters. The petitioner was brought up by Congress. He started several institutions and became rich but with the wealth so collected, he cannot purchase the voters. In the said report, it is also stated that the respondent No. 1 spoke that 5000 cycles were being brought in the constituency for distribution. There has started distribution of money for renovation of Chawadies and temples and taking reference, Sharad Pawar spoke that if this wealth is distributed in this manner, there should not be any objection. He referred to other national problems to which reference would be made later but suffice it to say that petitioner who had sought the support of Janta Dal, could not purchase the voters and that the results of election would be seen revealed and the petitioner would realise that he has miserably failed in his attempt to purchase the voters on the strength of money. Sharad Pawar took clue from the speech of respondent No. 1 with reference to the petitioner.

159. There was also reference to Gundaism by the petitioner in that constituency. The caption of this news report is that the votes cannot be accured on the strength of money and Gundaism. There was war between morality and faith on one side and power and wealth on the other. But ultimately the morals and loyalty would win. It cannot be lost sight of that even according to respondent No. 1, and Sharad Pawar, the real contest was between the petitioner and respondent No. 1. The candidate of B.J.P. had really no weight and was bound to loose. Obviously, therefore, the above remarks would certainly related to petitioner and none else.

160. Popat Sambhaji Warkhede at Exh. 78 has not been shown to be either the Congress worker or the worker for the petitioner. He has stated that he has been growing sugarcane and has been supplying the same to Dnyaneshwar Sugar Factory and thereafter to Mula Sugar Factory, which belongs to respondent No. 1. His village is about 14 to 15 kms. away from Newasa and is situated at the bank of Pravara river. He has positively stated that he does not work for any political party. He attended the Newasa Bazar Tal meeting where the meeting commenced at about 11 to 11.15 a.m. and lasted for some time 10000 people had attended. He heard the speeches of Kolhe, Chief Minister. Other speakers were sitting on the dais which was about 4' to 5' in height. Ghule Patil, Prasad Tanpure, Shankarrao Kale, Dada Patil Shelke were present at the meeting. The respondent No. 1 spoke that he had requested petitioner not to go against congress party and that he was himself prepared to withdraw from the election fray if the petitioner was given ticket. However, he criticised the petitioner by stating that petitioner got his cousin Annasaheb Mhaske nominated as the Minister in the Maharashtra Government. His son was also the President of Youth Congress. Petitioner should have selected some backward class candidate for that post. Respondent No. 1 further stated that the petitioner was to spend about Rs. 3 crores for this election. He was to take out rally of 5000 cyclists; distribute the same amongst participants. Petitioner had given Rs. 5,000 for improvement of Chawadi at Newasa tahsil.

161. He further stated that people should accept cycles, get their temples renovated, Chawadies renovated but they should vote for congress. He further stated that this was an opportunity for the voters from South constituency to teach lesson to the petitioner. North was trying to invade the South Nagar but the voters must resist this attack. This was the prestigious election for the petitioner and that all voters must stand by respondent No. 1. Similarly Ghule also spoke about the petitioner.

162. So far as Sharad Pawar is concerned, he has stated that Sharad Pawar also addressed the meeting and further spoke that petitioner was indulging in Gundaism in Nagar. His agents were present everywhere. The Gundagiri must be controlled by the police. As that of Chief Minister, he would give directions to the police to take suitable action. He further stated that respondent No. 1 has spoken about the distribution of cycles, clothes sarees etc. and that people must get those cycles but vote for congress. Voters must get the wealth of the petitioner distributed amongst them and this was an opportunity that has been brought about by the then Prime Minister V. P. Singh. Sharad Pawar further stated that the petitioner was trying to contest from South Nagar constituency because people are poor and South Nagar is a draught affected zone. Petitioner felt that he could purchase the voters on the strength of money. He further spoke that people from garden rich area betrayed the candidate but not the people from poor area.

163. He further stated that petitioner had established several institutions with the help of congress. He described a "simile" by stating that he went to seek bride for his son but married himself. He also stated that petitioner felt that he could win the election on the strength of the wealth but the petitioner would soon learn the truth on the day of election. The petitioner may be feeling that the wealth is all power but in fact, the morality and truth shall prevail.

164. Next day he contacted petitioner and acquainted him of the above speech. In the cross examination, he has stated that the Chief Minister spoke for about 45 minutes. He admits that he has taken advance of Rs. 30,000 from Mula Sugar Factory but has denied that he did not supply sugarcane to that factory. On the contrary, he has denied that he supplied sugarcane to Pravara Nagar Sugar Factory. Only Rs. 2,000 to Rs. 3,000 are due to Mula Sugar Factory. He has also denied that he has been threatened by the management of Mula Factory that he would be prosecuted under section 420 I.P.C. Sambhaji Fatke, Shivaji Fatke and Shahaji Fatke are his maternal uncles. Sambhaji Fatke had canvassed for the petitioner. But he did not read any news report in this

behalf. He has pleaded ignorance about the photograph of Sambhaji Fatke in Sarwamat dated 3-5-1991. He has pleaded ignorance about the relationship between the petitioner and Sambhaji Fatke. He was sitting at the distance of 300' from the stage but did not come across any acquaintance in that assembly.

165. He has stated that he had the feeling that confused image of the petitioner was projected. Petitioner had no any activity in North Nagar. Of course, he admits that he did not take down noted of that speech made by respondent No. 1 or Sharad Pawar. He felt that there were personal attacks by respondent No. 1.

166. Now so far as the suggestions in the cross-examination are concerned, respondent No. 1 could have very well produced the evidence regarding the news contradicting this witness. There is also nothing to suggest that Warkhede canvassed for the petitioner. If in that light, the evidence of this witness is assessed, it cannot be said that this is an evidence of an interested witness. Of course, in a place like Newasa Bazar Tal and other places, the sugar factories run by respondent No. 1 and petitioner are bound to have some influence on the sugarcane growers. The fact that this witness had dealing with Mula Factory of respondent No. 1 shows that he had dealing with respondent No. 1's sugar factory and not with the sugar factory of petitioner at Pravara Nagar. Respondent No. 1 had the best opportunity to tender the documents to show that this witness was angered at the recovery proceedings of the loan by Mula Factory. This opportunity has not been availed of by respondent No. 1 and in absence of any documentary evidence about influence, it is difficult to hold that this witness is a bias against respondent No. 1.

167. It is not the case of respondent No. 1 that this witness canvassed for petitioner. On the other hand, this witness felt that looking to the activities of the petitioner, he would canvass for the petitioner but all the same there is no evidence whatsoever to show that Warkhede actually canvassed for the petitioner, and if in that light, he has attended the Bazar Tal meeting, I feel that his averments must be accepted in so far as they related to the personal character and conduct of the petitioner.

168. P.W. 15 Ramnath Mohaniraj Gharute at Exh. 115 has deposed that he had carried out the video shooting of this meeting at the instance of respondent No. 1. He had tendered the first cassette Exh. 74 but when he found that the same was edited, he tendered the present cassette at Exh. 135. The first cassette Exh. 74 is of about 47 minutes' duration but the original cassette is of 1 hour and 45 minutes' duration. He has stated that in the photographs tendered, he is seen carrying out the photography but so far as the video shooting is concerned, he has stated that if the camera is fixed on the triangular stand, the video shooting and photography can simultaneously go on. According to him, the cassette Exh. 135 is the master cassette. Of course, in the cross examination he has stated that scene which is to be found in the edited cassette at Exh. 74, namely the pilot of helicopter getting down, is not to be found in the master cassette but the same is possible if the camera operation is not correct. He has seen the cassette for 10 to 15 times.

169. Now so far as the video shooting by this witness is concerned, even the witness for respondent No. 1 Joshi has stated that video shooting business is carried out by Gharute. There are several photographs which show that Gharute is operating the camera and in that light, it is difficult to hold that Gharute would not carry out the video shooting. In the cross examination, Gharute has stated that Amare and Pandurang Jadhav on behalf of respondent No. 1 asked to supply the cassette. He had given the original cassette to Amare but got it back with the instructions that Gharute shall edit the cassette deleting the scene which contained the offending statements made by the respondent No. 1 or Sharad Pawar. Gharute has further stated that it is possible to cut the scene but it is absolutely impossible to add to the scene which is recorded on the video shooting.

170. There are some aberrations in the statement of Gharute but all the same, when one looks to the video cassette and also the transcription at Exh. 135, it would be abundantly clear that likelihood of the dubbing of the scenes and the duplicates of the personalities or mock scenes are absolutely impossible. Suggestions have been made to this witness that the dubbing was carried out but surprisingly, no evidence whatsoever to prove that dubbing has been brought on record. Gharute has denied that the offending portions referred to him in the evidence, which involved respondent No. 1 and Sharad Pawar, have been rather planted. Now so far as the video cassette is concerned, it is equated with the documents under the Evidence Act. It has been observed in the foregoing paragraphs that the evidence of tape can very well be accepted if they relate to relevant fact if the author of the tape is examined and if the voice of the speaker is identified.

171. These views are expressed in A.I.R. 1973 S.C. 157 in the case of Malkani V/s. The State of Maharashtra and A.I.R. 1973 S.C. 1788 in the case of Ziauddin Bukhari V/s. Brijmohan Mehra. They are relevant so far as the meeting of Shrigonda on 11-5-1991 is concerned. But so far as the video cassettes are concerned, it can be observed that video cassettes represent the visual audio version of the scene. There should not, therefore, arise question of identification of voice as is required in the tape. Video cassettes are the visual of the speakers. The persons seen in the video cassette can see the lip movements of the speaker and the utterances made by them. If lip movements are varied with the utterances, the question of identification of voice as required in the case of tapes, would pale into insignificance. It is also the settled position of law that if the tape contained some facts which may not found in the video cassette, then they have to be scrutinised. But the evidence on tapes has to be admitted. Now so far as the video cassettes are concerned, it can be unhesitatingly observed that there is absolutely no possibility of dubbing or adding to the scene without coming to the notice of the viewer. It is unfathomable that the scenes with the duplicate characters can be recorded in presence of large number of people. Various photographs which are to be found in this case about this meeting, clearly repel the suggestion of dubbing or screening fake characters.

172. All along when the cassette was viewed, it was found that there was absolutely no dubbing. The lip movements of the speakers tallied completely with what was spoken and there is absolutely no ground to disbelieve that those speakers did not give the utterances, to the details of which I shall come later. Suffice it to say that the copy of the video cassette has to be carried out in a mechanical way and each copy becomes virtually the original under section 60(2) of the Evidence Act. Under that provision, each copy virtually becomes the original. If in that light, the evidence of Gharute is considered in regard to the master cassette before the Court, the other eventuality which crops in is that the copy before the Court is virtually the original. As stated above, there is no possibility of dubbing or enacting the scene with fake characters. Video cassettes shall have to be placed on the high pedestal in the sphere of evidence. The test of identification of the voice would become irrelevant because there is depicted the actual audio and video version of the scene. There is also no limitation of the negative photo of the positive print. The cassettes would picture the scene directly on T.V. Screen. Strong grounds must exist to disbelieve the audio visual scene. The fakeness of the scene can be readily discovered on the basis of lip and physical movements of the speakers.

173. The learned counsel for the noticee and the learned advocate for the respondent No. 1 have emphasised that the evidence of Gharute is so suspicious that it is impossible to believe that the cassette before the Court is the master cassette. It was possible for the respondent to have rebutted this evidence of Gharute by examining the Bendre Studio owner to establish that dubbing has taken place. There is suggestion to that effect in the cross-examination of Gharute. I feel that such evidence could not be given and has not rightly been given. No dubbing has taken place. The entire meeting has been screened in the video cassette. The sound track is an integral part of the photography and I, therefore, feel that the video cassette before the Court is the genuine cassette.

174. The transcription at Exh. 135 has not been disputed vis-a-vis the cassette before the Court. The learned counsel for the respondent has nowhere stated that some portions were not uttered by respondent No. 1 or Sharadchandra Pawar. The evidence of Gharute has, therefore, to be accepted. The photographs at Exhs. 131, 132, 151 related to Bazar Tal meeting. In the photographs Exhs. 132, 137 and 137(1) and 137(2), 138, 139 and 140, it is clearly shown that Gharute has been carrying out the video shooting. In photographs Exhs. 142 and 143, there is displayed the board of "Gharute Video Shooting". It would be thus clear that Gharute is the professional person who can operate the video camera. There is, therefore, no reason to suspect that the video cassette before the Court, which is of 1 hour and 45 minutes' duration, is not the genuine cassette.

175. To counter this evidence, respondent No. 1 has examined Sadashiv Baburao Joshi, who claims to have attended the Bazar Tal meeting. He has denied that offending statements were made by respondent No. 1 or Sharad Pawar. But in the cross examination, it is clear that he is a congress worker since last several years. He is closely associated with respondent No. 1. He is seen in photograph Exh. 133 along with respondent No. 1 and Marutirao Ghule at the function of commencement of sugar crushing season of the sugar factory. He has stated that his daughter-in-law is a teacher in Zilla Parishad School under the control of respondent No. 1 and the name of his daughter-in-law is shown as Asha Mohan Joshi and not Mrs. Asha Raju Joshi. It can well be inferred that Asha got employment in Zilla Parishad School because of the relationship between Joshi and the respondent No. 1. In photographs Exhs. 101 and 102, Joshi is seen present. Govindrao Adik was not sitting on the dais in that Newasa meeting. The photographs Exhs. 131, 132, 134 relate to Newasa meeting.

176. He has admitted that in photographs Exhs. 138 and 139, Gharute is seen operating video camera. He has stated that he has been working for congress from 1978 onwards upto 1984. He does not know whether respondent No. 1 joined with about 500 workers of Congress (S) with Congress (I) headed by Indira Gandhi. But when faced with paper Exh. 141 dated 3-3-1980, he admits that he was president of that function. Similarly in photograph Exh. 141, he is shown to have presided over the meeting. He admits that photographs Exhs. 141, 145 and 146 are of Newasa meetings from different angles. He is seen on the dais in the photographs. He has been referred to various contradictions and omissions in Exh. 135 to which I shall come later. Suffice it to say that the above evidence shows close association between respondent No. 1 and this witness Joshi. Both of them belonged to Congress (I) party.

177. He has stated that when he read Sakal, Kesari referred above, it contained false news regarding the speeches of respondent No. 1 and Sharad Pawar. He did complain to Balasahib Jadhav—the head of the District Congress Committee but did not pursue the matter any more. He even did not tell respondent No. 1 when he visited him at Newasa later on and with the passage of time, Joshi lost sight of making the complaint about the false news. He himself did not complain in writing to the local congress committee or the president of the District Congress Committee about the objectionable statements and required action in that behalf. He admits that he has been reading Sakal and Lokmat papers but he himself did not write to the Editors or publishers complaining about the false statements. He admits that the petitioner is the foremost leader of Congress in Nagar district but this was so as long as he was with Congress (I). He has admitted that Sharad Pawar visited this constituency on three occasions during this election. Bansibhau Kothari spoke in the initial part of the meeting at Newasa.

178. He has stated that he does not remember that anybody spoke in the meeting of 3-5-91 about the petitioner giving Rs. 50 Lakhs to Janata Dal; Rs. 20 Lakhs to Janata Dal candidate. Bansibhau Kothari spoke in that behalf. Bansibhau Kothari is a congress worker. Joshi has stated that the respondent No. 1 did not utter about the allegations and further about Rs. 5,000 given for repairs of the Chawadi and temples. Bansibhau Kothari had apprehended such mischief at the hands of the petitioner. The foregoing evidence

would clearly show that Sadashiv Joshi is an interested witness. He belongs to congress; respondent No. 1 belongs to congress. Joshi has attended several functions where respondent No. 1 has been the important invitee. Their association has been over couple of years. Joshi has been drafting documents for respondent No. 1 as Bond Writer and for all these reasons, it is difficult to hazard the conclusion that Joshi is the disinterested witness. After all, if he would allude to the incriminating statements by Sharad Pawar or respondent No. 1, there was every likelihood of the respondent No. 1 being unsuited for corrupt practices. It must have, therefore, been the supreme effort of Joshi to protect the returned candidate of his party. Times and again, as suggested above, Supreme Court has laid down that the evidence of such witness should not be relied upon.

179. Kalamkar in his deposition at Exh. 232 has stated that he is also a congress worker. His evidence has been discussed at length in the foregoing paragraphs. So far as this meeting is concerned he has stated that the photographs Exhs. 234 and 235 are about the Newasa meeting. He was sitting on the dais along with Prasad Tampure and other dignitaries of the party. This was the inauguration of election campaign of the Congress (I) party candidate Kale and respondent No. 1. Sharad Pawar arrived there at about 10.30 or 11 a.m. Kothari was telling the workers that they shall strongly stand behind the congress. He said that there were wide spread rumours amongst the members of public that the petitioner was to spend huge amount in the election; that petitioner had paid Rs. 50 Lakhs to Janata Dal and Rs. 20 Lakhs to Janaja Dal candidate. There was also rumour that petitioner was to distribute liquor, sarves etc. and was to take out cycle rally and distribute the cycles amongst the participants. Other speakers also joined Kothari in present meeting.

180. Respondent No. 1 spoke that he was thankful to Rajiv Gandhi for allotting him ticket. He spoke that the workers shall not be swayed away by the rumours in circulation. Sharad Pawar spoke about national problems. However, he did not utter about the petitioner indulging in corrupt practices. He has been cross examined at length and in the paragraphs relating to the assessment of his evidence, it has been observed that Kalamkar really deserves no credence. He is fundamentally the congress worker. He has been indulging such practices which should bring him down in the public estimation. He has also been referred to various contradictions to which I shall come later. Suffice it to say that Kalamkar does not really advance the cause of the respondent No. 1 in regard to the Newasa meeting.

181. Sudhir Kesarchand Mehta has also been discussed at length in the previous paragraphs. He is a person who is virtually the spokesman to respondent No. 1. He is seen in several photographs, along with the respondent No. 1. Taking the caution struck by the Supreme Court in various cases, the evidence of Mehta shall have to be taken with pinch of salt. Now so far as the meeting of Newasa is concerned, he has stated that the meeting started at about 10 to 10.25 a.m. He took seat on the bench meant for the press reporters. Bansibhau Kothari addressed the meeting.

182. Respondent No. 1 spoke that the election has come after a short period of misrule by Janata Dal Government. The workers must unite. He also referred to the attempts made for getting ticket for the petitioner. He has stated that the petitioner had amassed wealth on the strength of congress and he should not have contested as a rebel candidate. He further spoke that petitioner was never serious about backward areas. Similarly Sharad Pawar also spoke about the national problems, about the undesirability of elections at short period, the heavy expenditure involved in those elections. He referred to the petitioner as member of the family who should not have contested as rebel candidate. In photograph Exh. 32, Mehta is seen and so also in photograph Exh. 131. He admits that he was not required to cover the area of Newasa for Kesari paper. He is also seen in various Photographs which have been tendered on record and which have not been denied by Mehta.

183. He claims to have read the paper reporting about Newasa meeting but it has been previously observed that Mehta did not take steps to contradict the news items appearing in Lokmat and Kesari. He admits that it is not possible

for the reporters to give the report of the meeting which he has not attended. He has also admitted if the news items are received late, it is not possible to transmit the entire report of the news to the editor. He reads papers circulated in Nagari district. He admits that if the reports referred above are studied, they would clearly show that the petitioner is indulging in corrupt practices.

184. R. W. Chandel has also covered the Newasa meeting. He has, however, denied that the respondent or Sharad Pawar talked about the corrupt practices committed by the petitioner. He did not cover the Newasa meeting as a reporter. However, he has stated that he does not remember whether Sharad Pawar spoke that South Nagar is a poor constituency and that the petitioner would try to win over the poor voters and that the people must resist such move on the part of the petitioner. He of course, denies the other offending statements made by Sharad Pawar. He has stated that Dhamale and Padmabhushan Deshpande had not attended the meeting. He is seen in photograph Exhs. 131 and 132. Sopan Darandale, Dhamale and Gandhi were also seen in the photograph and this would show that Dhamale was present in photograph Exh. 131 relating to Newasa meeting. Chandel has been examined at length and it was pointed out earlier that his evidence is also not an evidence of a disinterested witness. He admits that the news reports appearing in the papers could amount to defamation of the petitioner. But surprisingly, he did not complain to the editor of the papers or any other responsible person of the papers when he was impressed that the news were false. I, therefore, feel that the evidence led on behalf of the respondent No. 1 in regard to Newasa meeting does not appear to be truthful.

185. When being faced with the situation created by the witnesses, more particularly, Sadubhau Joshi, Dadabhau Kalamkar and Chandel, the learned advocate for the petitioner adopted an ingenious method of facing to the witnesses with various statements of the speeches made by various witnesses namely Govindrao Adik, Shankarrao Kolhe, respondent No. 1, Sharad Pawar and others in Exh. 135 and has thereby tried to establish that these witnesses speak in varying terms with regard to various statements made by different speakers. Some say that some statements were made whereas some say that those statements were not made but other statements were made.

186. In the cross examination of the above witnesses, it is being suggested on behalf of the petitioner that if the version of these witnesses is accepted to be true, then the speeches rendered by various witnesses would be truncated speeches and would not appear to be the real speeches so as to carry some message or propaganda in regard to respondent No. 1, petitioner and Kale. Respondent's witness Sadubhau Joshi at Exh. 130 has been referred to various portions of the speeches in para 10 of his evidence. This part has to be considered in juxta position with the transcription at Exh. 135 i.e. the video cassette. He has stated that respondent No. 1 was the compere of this meeting. Dada Patil Shelke addressed the meeting after Thorat. Thereafter Bedekar Sir, Shankarrao Kale, Govindrao Adik, Marutirao Ghule, then the respondent No. 1, Shankarrao Kolhe addressed the meeting and this meeting was concluded by the speech of Chief Minister Sharad Pawar. Dada Patil Shelke spoke that the congress party had objective and policies. They must stand behind the Chief Minister. The contesting candidates were known and they needed no more introduction. He emphasised that the congress candidates must be returned with overwhelming votes. He assured to the audience that he would see that both the congress candidates from North and South Nagar constituencies would get maximum number of votes at least from his village. He was referred to the speech in Exh. 135 which, as indicated, is the transcription of the video cassette.

187. It may be stated that Exh. 74—video cassette—is the edited version of the long cassette, which can be numbered at Exh. 135-A. My reasons for exhibiting the same is that when both the cassettes are compared, the timings shown in the edited cassette is the same in the longer version Exh. 134-A. "Timer" act of video camera gives same time for different incidents. Sequence in which the scenes are taken remains identical. The edited cassette shows the abrupt

cuts in the speeches and the scenes where in the other cassette Exh. 135, one can clearly see the speeches and their details. In Exh. 74, the learned advocate for the respondent No. 1 has contended that he does not object to the cassette being exhibited. He thus owns cassette as undisputedly recorded by Gharute.

188. It will have also to be borne in mind that in the photographs Exhs. B-91, B-92 and B-93, Gharute is seen operating the video camera by fixing it on a stand having three poles. He is just in front of the dais and it is clearly shown that the leaders of congress are present. Sharad Pawar is also seen on the same stage. The other photographs which need to be mentioned are photographs Exhs. B-90 wherein also we can see the stage of the Newasa Bazar Tal meetings. In photograph Exhs. 131, 132, 131, 231, B-7, one can see the details of the attending personalities, the nature of the dais and the large number of persons present. It can also be seen that in photograph Exh. 132, Gharute is seen taking the photographs of the same meeting and as indicated in the large photograph Exh. B-91, B-92 and B-93, it is clearly seen that the video camera is operated on a fixed pole.

189. If in that background, it is stated by Gharute that he had recorded the cassette, there is no reason to doubt his testimony. The learned advocate for respondent No. 1 has vehemently disputed Exh. 135-A but when this cassette was viewed soon after the edited cassette, nothing could be pointed out by the advocate for the respondent No. 1 that the larger version is altogether a different version from the version of the meeting depicted in Exh. 74. If in that light, the entire transcription is studied, one would be convinced that the cassette Exh. 135-A is the cassette of the entire proceedings of the Newasa meeting, edited version of which is contained in cassette Exh. 74.

190. Joshi has been referred to various statements. He has stated that Govindrao Adik spoke the marked portion A to A in Exh. 135 which relates to the situation prevailing in the country; the obligation on the part of the congress workers in Nagari district to stand unitedly behind the candidate. He has applauded the leadership of Sharad Pawar and he underscored the importance of the developments of a farmer for the development of the nation. In the speech of Marutirao Ghule Patil, he has stated that Marutirao did speak portion B to B referring to Shankarrao Kale—the leaders coming from North to South Nagar, Members of the Legislative Assembly, Brothers and Sisters. According to him, the day of this meeting was a golden day and that there was a proper leadership. Now these portions are pointed out because they are not to be found in the censored cassette whereas they are to be found in the cassette Exh. 135-A. He has further stated that respondent No. 1 did not utter portion C to C at pages Nos. 6 and 7 of the transcription and the same relates to the petitioner who always opposed party and was responsible for factions in party.

191. It is also suggested in this portion of the speech of respondent No. 1 that the petitioner was to spend huge amount; that 5000 cycles were expected within 8 days and that they were to be distributed amongst boys participating in the rally and that the congress party would not be in a position to counter this financial assault on the electorate. He also indicated that the total fund to be spent for the election by the petitioner was in the neighbourhood of 2.5 to 3 crores. He advised the voters to send their children to obtain the cycles. He further stated that Rs. 5,000 were received for repairs of Chawadies. He, therefore, advised the workers to celebrate Diwali on the wealth of the petitioner but vote for congress. He also indicated that the persons from North Nagar were continuously attacking South and that South has been resisting this attack with all vigour. Hence the workers must forget their differences and work together.

192. This witness admitted that portion D to D in the speech of Shankarrao Kolhe was uttered by Shankarrao Kolhe and that portion is that, if they would like to save the Maharashtra, they must carefully preserve the leadership of Sharad Pawar and for that purpose, they must return Shankarrao Kale and Yeshwantrao Godakh in this election. He however, denied portion E to E in the same speech which

relates to the petitioner and the suggestion is that although Shankarrao Kolhe was not given ticket in 1985, he chose to keep himself away from the contest but worked for the official candidate. The scrap (Bhangar) had come to the South and whether voters should accept this Bhangar (this relates to the petitioner)? He admits that Sharad Pawar spoke portion G to G on pages Nos. 10 and 11 and that is with regard to the Government of V. P. Singh, B.J.P. and other parties which should provide stable Government. They must at least rule for five years. But unfortunately, they could not rule for more than 10 to 12 months. Chandrashekhar replaced V. P. Singh and he too could not continue for long. The nation is, therefore, faced with the fresh elections for which Maharashtra will have to spend Rs. 600 crores. This amount could well have been spared for the development and uplift of the poor. Irrigation schemes could have been undertaken, hutments could have been provided.

193. He also admits that Sharad Pawar spoke portion I to I but not II to II. Portion H to H is in relation to the electoral failure of Janata Dal Government. Portion I to I relates to the rulers having no right to ask for votes. The Government had no funds to make payment of its employees. Chandrapur scheme would have cost about Rs. 700 crores during the time of Rajiv Gandhi but the same was kept behind and the costs have escalated to Rs. 1100 crores. Out of that, substantial amount will have to be contributed by the Maharashtra Government and thus the Government has been wrongly penalised. This amount could have been deployed in developmental schemes.

194. Pausing for a moment, it can well be said that portion H to H really does not relate to the petitioner. It is a general criticism against the then Government in power and still this witness has chosen to say that no such statement was made. This is part of Exh. 135. He admits that Pawar referred to Punjab and Kashmir problems but is unable to give the details of portion J to J which speaks about feeling of Hindus, atrocities on Muslims, and the terrorists taking training in Pakistan. The Central Government had become weak and could not, therefore, control law and order problem in Punjab, Kashmir. That Government had no right to continue in power. He says that no such utterances were made by Sharad Pawar. I feel that when the cassette was viewed, this speech could be seen and heard and the same was made by Sharad Pawar. Utterances in portion K to K relates to the temple dispute and criticism levelled against V. P. Singh. He criticised also the champions of Ram Temple at Ayodhya. He also criticised the shocking death of about 1000 persons in the dispute in Uttar Pradesh and thus castigated the inefficiency of the then ruling Government.

195. Joshi however deposed that portion N to N was uttered by Sharad Pawar and so portion L to L. That relates to the B.J.P. propagating for Ram Temple. He also criticised the canvassing of B.P.P. of Hindu religion. According to him, this was nothing but a ploy to spread ill feelings amongst Hindus. He also admits portion M to which is in respect of the petitioner. It is suggested that father went in search of bride for his son and married himself. It is also told by Sharad Pawar that the villagers did develop an impression that the old man—the leader of village—had become crazy but could not openly criticise because their sugarcane was to go to the sugar factory of that person. These insinuations relate to the petitioner.

196. So far as portion O to O is concerned, he has stated that the same was not spoken and that also relates to the petitioner. There is a suggestion that the petitioner may try to dig with the elbow the soft earth of South but he would suffer injury on account of the granite of Sahyadri there below. Joshi admits that portion N to N was spoken and that also relates to petitioner as a leader of congress and he leaving the congress, on being denied party ticket. The portion Q to Q in Pawar's speech is also denied and that relates to the attempt on the part of the petitioner to purchase poor voters from South constituency. So is the case with portion S to S which has been denied by Joshi and

that relates to the Gundaism perpetrated by the petitioner. So is the case of portion R to R which is in connection with distribution of cycles, distribution of wealth gathered by petitioner amongst the electorate and the mandate to the villagers to vote for the congress. Now if these omissions are taken into consideration, the sequence of the speech would be lost and that is precisely seen in the cassette Exh. 74 which is an edited cassette.

197. In case Kalamkar, contradictions are referred to in para 21 of his evidence. He also attended the meeting at Newasa. He admits that portion X to X and A to A were uttered by Govindrao Adik. Portion A to A is in respect of security in the country, the problematic condition of the nation, directions to the workers to unite and fight to win. Portion X to X is in relation to Hindus. Portion Y to Y is to be found in the speech of respondent No. 1 and Kalamkar states that he does not remember whether it was uttered. It is in respect of the petitioner who successfully contested the elections for 20 years and could not be defeated and that the respondent No. 1 got an opportunity now to defeat him. He is the son of Padmashri and has a strong family background. This portion is not to be found in the edited cassette.

198. He is unable to say as to whether respondent No. 1 had spoken portion X to X at page 7. That also relates to the assault of North on South. He has been referred to portion Z-14 to Z-14 in the speech of Shankarrao Kolhe and that is in respect of the leadership of Sharad Pawar. It may be stated that the other witness Joshi has spoken that Shankarrao Kolhe did state to that effect. He has also been referred to portion Z-16 to Z-16 in the speech of Chief Minister and he says that this portion relates to the duration of the Government for five years of the party other than congress. Rajiv Gandhi refused to form the Government. He says that Sharad Pawar did speak portion G to G which relates to the recurring elections and huge expenditure involved therein. He is unable to say whether Sharad Pawar criticised B.J.P. In the evidence of Kalamkar, it was also shown that some portions which were spoken by respondent No. 1 and Sharad Pawar or Govindrao Adik are not in the cassette.

199. Narendrasingh Hirasinga Chandel witness for respondent No. 1—at Exh. 178 has also been referred to the various omissions and contradictions in paragraphs Nos. 23 and 24 of his evidence. He has stated that Govindrao Adik did not speak portion B to B about the petitioner and that is in relation to the petitioner calling upon him not to contest from South but to contest from North but petitioner left. He however denies portion U to U in the speech of Dada Patil Shelke which also refers to the petitioner having been brought up by congress (1) and given ticket for five times. I feel that this portion has been wrongly denied by the witness. He also stated that Govindrao Adik did not utter portion B to B which, as indicated, refers to the petitioner. He has stated that respondent No. 1 did not utter portion X to X on page No. 7 of his evidence and that is with reference to the speech of Bedekar who called upon the workers to unite. Respondent No. 1 spoke that there was assault by North on the South and that the workers should realise this and unite. He assured Dada Patil Shelke, Kolhe that whatever had happened in the Bank affair had happened on account of Kale Saheb. He never realised that the petitioner would behave in such a manner.

200. He has stated that Shankarrao Kolhe did not utter portion Z to Z, wherein the respondent No. 1 requested petitioner not to insist on party ticket; that the party ticket was given to him on five occasions and that the petitioner should not fight on the strength of wealth. Kolhe did not utter portion Z-1 to Z which as indicated, refers in the being denied the ticket and he remaining out of contest without any grudge. I feel that this has also been wrongly denied by this witness. He has stated that portions from Z-2 : Z-2 to Z-9 : Z-9 were not uttered by Sharad Pawar, with reference to Rajiv Gandhi leaving the power and the deteriorating condition in the nation. It also refers to the affairs

of the Government, its inability to make payment for purchase of grains, that there was no place for Buddhhas or Muslims or Christians in Ram Raja that there was confusion on account of communalism on one side, factionism on the other side and the critical condition in which the country was put. He also predicted the result in favour of the congress candidates. He also referred to the uncertainty in the minds of Atal Bihari Vajapi and L. K. Advani by filing nominations in two constituencies. Some portion relates to the petitioner who left North and came down to South.

201. So far as portion Z-10 to Z-10 is concerned, this witness is unable to say whether it was spoken and the same is in relation to the militant diamention in Kashmir and Punjab. It refers to the inability of the people to contest or to vote because they are likely to be gunned down by the bullets of the militants. It reflects upon the dangers of cessation in the country. Z-11 to Z-11 refers to Kashmir. He has stated that portion Z-12 to Z-12 and Z-13 to Z-13 had not spoken by Sharad Pawar and that portion is in relation to the petitioner. The petitioner is shown to be a powerful person. He had sent his agents on all sides and in all parties and that all people would unite at Nagar and would start Gundaism. If the evidence of Chandel is taken in its correct perspective, it would be found that Sharad Pawar did not speak for their duration, period of the Government, which is to be found in the cassette. The speech minus the omissions pointed out by Chandel would hardly amount to a speech for propaganda.

202. The learned advocate for the petitioner has contended that all these so called omissions appeared to be nothing but well designed only to show and delete these offending portions from the speeches made by respondent No. 1 and Sharad Pawar. I do find a lot of substance in this submission because De Hors these omissions, the speeches would become meaningless. They would not be able to convey any meaning even from the speeches which have been recorded in the edited cassette.

203. Now coming to the evidence of respondent No. 1 at Exh. 328, it will be found that he has been referred to this meeting in para Nos. 49 to 55 of his evidence on pages 33 to 40. In his deposition, he has stated that Sharad Pawar addressed this meeting. There was a stage on which 14 to 15 persons were sitting. There was pendal and about 10,000 to 15,000 persons attended this meeting. Shankarrao Kolhe, Bhausaheb Thorat, Govindrao Adik, Dada Patil Shelke, Abasaheb Nimbalkar, Dadabhai Kalamkar, Bansibhai Kothari, Balasaheb Jadhav and other leaders were present. Shankarrao Kale addressed the meeting. Photograph Exh. 131 shows the presence of Sopan Darandale, Chandel, Madhukar Deshpande. In photograph Exh. 132, Sudhir Mehta is visible. Photograph Exh. 134 also relates to this meeting and Dadabhai Kalamkar is visible in that photo. Photograph Exh. 151 also relates to Newasa meeting wherein Kothari is seen. The persons addressing the meeting are Govindrao Adik, Shelke, Shankarrao Kale, Bedekar, Shankarrao Kolhe, Sharad Pawar the Chief Minister, Communist leader Subhash Landge and two more persons joined Congress at this function and they were felicitated by Sharad Pawar.

204. He has further stated that he gave the particulars about distribution of tickets in the speech. He requested the petitioner not to contest as an independent candidate. He was the senior Congressman and was Member of Parliament for 20 years. However, efforts should be made to avoid war and it is in that light that he persuaded the petitioner not to contest. He also spoke about the necessity of holding the elections within a short span of 15 months. Respondent No. 1 welcomed Sharad Pawar. He further spoke that workers should not be afraid of the show of propaganda by the petitioner on the mass scale. He expressed the significance of democracy. He told the workers not to fall victim to allurements and temptations. Sharad Pawar also addressed the meeting. He referred to Punjab, Kashmir, Assam problems. He criticised Government of V. P. Singh, which imposed a heavy economic burden on the exchequer. He however expressed certainty that Nagar would return Congress candidate.

205. Sharad Pawar explained the huge expenditure involved in holding fresh elections. He also told the workers to show the petitioner, who is also the important member of Congress, as to what would happen if petitioner is not backed by the political party. Sharad Pawar further emphasised the need for Congress for stable Government. The respondent No. 1 said that he never criticised the personal character and conduct of the petitioner. He has stated that the Chief Minister did not give the speech with his consent. He has stated that he does not own the offending portions in the newspaper Kesari dated 4-5-1991 at Exh. 106. He has been referred to portions A to A; B to B and C to C to which I shall come later while dilating on the contents of the speeches. He has also stated that the Chief Minister also did not utter anything of the sort touching upon the personal character and conduct of the petitioner. He has stated that Badabhai Joshi attended the meeting. Badabhai is seen in the photograph. He has stated that Sarvamat paper at Exh. R dated 5-5-1991 contains the correct report.

206. In the cross-examination commencing from para 234 on page 231 of his evidence, he has admitted the photograph shown to him. The same are referred in the foregoing paragraphs. He has stated that he had received two video cassettes from the Court but he cannot say whether the speeches give the speeches in the order and sequence depicted in the video cassette. He is also unable to say whether Lknath Gogtre joined Congress in that meeting. He also did not state anything about the paper cuttings and reports as well as the transcriptions of the video cassettes. He got transcriptions of both the cassette and the same transcriptions are available with his advocate. He is unable to say as to whether his transcriptions are tendered in the Court. The learned advocate for the petitioner has contended that these transcriptions have not been produced and they could not have been because the transcriptions at Exh. 135 is the correct transcriptions which could not be disputed by the respondent No. 1.

207. He does not remember the particulars of the speech as also that of Sharad Pawar. He has been referred to certain portion which he has denied. He does not remember whether the portions worded in A to A, B to B, C to C, D to D and to E are in the same words as spoken by the respective speakers. So is the case with portions G to G, H to H, I to I, J to J and K to K. Similarly portions L to L, M to M are not remembered by him. Even with regard to portion O to O, he has stated that he does not remember. Even portion P to P is also similarly replied to. So is Q to Q and R to R. Portion S to S has also been similarly disposed of. Portions T to T, U to U, V to V, W to W are also not accurately remembered by this witness. He has admitted that Sharad Pawar did criticise petitioner for leaving Congress. He states that he did not utter portions A-6 to A-6; A-7 to A-7; A-8 to A-8; A-9 to A-9. So is the case with portions A-10 to A-10; A-11 to A-11; A-12 to A-12. He has stated that Sharad Pawar spoke generally on all these portions. He has also been reported to various passages in the newspapers namely Kesari, Gaonari etc. Relating to the offending statements, he has stated that they were not made by either respondent No. 1 or Sharad Pawar. Ultimately, respondent No. 1 is bound to deny all these incriminating portions out of it would be found that the witnesses do not speak the whole truth about these omissions.

208. Now analysing the offending portions in Exh. 135, it would be found that the portion C to C of respondent No. 1 in Exh. 135 reads as follows :—

"The petitioner was creating factions in Congress party. Respondent No. 1 heard at Nagar that 5000 new cycles were to come and were to be distributed amongst the boys. He called upon the voters to send their children and secure those cycles free. He also stated that the budget for election was Rs. 2.5 to 3 crores. He has also stated that he reliably learnt that Rs. 5,000 were received for repairs of Chawadies. The electorate should celebrate Diwali at the costs

of the petitioner. He has also stated that the Congress would not be able to oppose this financial assault."

Now these allegations would show that they touch upon the personal character and conduct of the petitioner. It can be clearly inferred that the petitioner wanted to deploy wealth on colossal scale to secure the votes. He was prepared to distribute wealth in cash and kind. He wanted to repair the Chawadies and temples so as to please the voters and this is evident from the speech of respondent No. 1.

209. Now when one looks to the speech of Sharad Pawar, the offending speech can be worded as follows :—

"That petitioner had huge wealth but he should not be under an impression that he could purchase the voters from South. Every voter has self-respect. He may suffer hunger in times of distress but would not sell his faith for money."

He further stated that cycles would be distributed, dhobies would be distributed. Voters must accept it and he would have no objection. Because that is consistent with the Congress policy which believes in decentralisation of wealth. He further stated that temples would be renovated. If cycle is available, it should be obtained and for which he had no objection. However, about casting votes, petitioner should be impressed upon that money would not work. He also spoke that there would be Gundaism in Nagar. Petitioner had sent his agents to various places and they would all unite and perpetrate Gundaism in Nagar. He also castigated that systematic efforts are made to purchase the voters and defecting the workers. There is a war in which the true picture would be that the petitioner would be defeated. He had spoken that there was morality on one side and wealth on the other. However, the morality and loyalty would succeed. There is also mountain of wealth on one side and of poor on the other. But the poor would destroy the mountain of wealth.

210. Now if this speech is studied, it would be the general impression of the voters that the petitioner stands on the mountain of wealth; that with the wealth he would secret defection for workers, purchase voters. Sharad Pawar had asked the workers to guard against this but all the same, the impression is that the petitioner has no ideology, any policy, background except the wealth and with this vulgar display of wealth, he would win over the south constituency. All said and done, the minimum impression would be that the petitioner is an unprincipled person, would like to exploit the electorate with the help of wealth. The wealth is his main weapon. He would be distributing cycles, he would be also getting temples and chawadies repaired. On any reckoning, therefore, it is not possible to infer that these are the inferences and not the facts.

211. Under section 3 of the Evidence Act, the mental condition is also a fact. If the candidate has contracts with the foreign country, the inference may be that he is a traitor but that may not be necessarily a matter of fact. It is a deducible opinion which one may entertain. Here, however, one thing is certain that the petitioner is described as a person who believes the use of only weapon and that is wealth. There are also allegations that cycles were being distributed very shortly; that an amount was received for construction of Chawadi. It can not be, therefore, said that these are the inferences. These are on the other hand, statements of facts.

212. Now going to the Kesari report at Exh. 106, it would be found that it contains major portion of what is recorded in the tape. It refers to the poor from South. It also refers to the self-respect of the voters being tested by petitioner. The petitioner became rich and started institutions on the strength of Congress. He cannot purchase the votes on the strength of money. Sharad Pawar also derived from the speech of respondent No. 1 that cycles would be distributed, funds would be distributed for repairs of temples and chawadies. Pawar reiterated that this should be accepted as this would be decentralisation of wealth. Portions A-1 to A-1, B to B, A-2 to

A-2, C to C, A-6 to A-6, A-4 to A-4 and A-7 to A-7 are also to be found in the cassette at Exh. 135-A.

213. This paper has been proved by the reporter Padma-bhushan Deshpande and paper Gaonkari is proved Dhamaale. Gaonkari at Exh. 82 contains the similar references. All centre around one important fact that the petitioner was determined to use the wealth to secure votes. In this background, therefore, the paper reports at Exh. 82 and 106 also appear truthful. There is no noticeable digression from the transcription, Exh. 135. It can be, therefore, safely concluded that the speeches of respondent No. 1 and Sharad Pawar did touch upon the personal character and conduct of the petitioner. In this background, the case laws can well be discussed.

214. Law under section 123(4) of the R. P. Act can be briefly considered. In section 123(4) of the R. P. Act :—

"The publication by a candidate or his agent or by any other person with the consent of the candidate or his election agent of any statement of fact which is false and which he either believes to be false or does not believe it to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of the candidate in his election."

In A.I.R. 1970 S. C. 1231 in the case of Deokanta Barroah V/s. Golakchand Barroah, the Court held that the words "personal character and conduct" are so clear that those do not require further elucidation or definition. The character of a person may ordinarily be equated with his mental or moral nature. Conduct connotes the personal actions or behaviour. If a statement is made that the person has instigated or that he was guilty of violent acts in his political career, they touch upon the personal character and conduct. This view is also reiteration of the view taken by the Supreme Court in A.I.R. 1967 S. C. 808 in the case of Kumara Nand Vs. B. L. Sharma.

215. In A.I.R. 1969 S. C. 1366 in the case Mohan Singh V/s. Bhawarlal, the leaflet contained a statement that the candidate had misappropriated the funds collected by him. That statement was touching upon the personal character and conduct of the candidate. Similarly in Jagjit Singh's case (supra), the statement that the petitioner, amongst those who drink, his rank is very high and that he trimmed his beard, which was contrary to Shikhism, was held to be touching upon the personal character and conduct of the petitioner. However, in that case the respondent believed this to be true. He had led the evidence to show that the petitioner was in habit of taking drinks and that he had factually trimmed his beard, which is contrary to Shikhism.

216. The Supreme Court emphasised that the offending statements must be shown to be false and must have been made in relation to the candidature of the candidate. In the case of Deokanta Barroah, the use of words like Deshdrohi or Vishwasghatki have been held to be the expressions of opinion and not the statements of facts. In that case, it was held that the candidate had contacts with foreign countries. In A.I.R. 1970 S. C. 1500 in the case of Pratap Singh V/s. Hardayal Singh, the Court held that when an imputation was made that the petitioner has received huge fund from Swatantra Party and that he had misappropriated them and did not pay to other members, that amounted to corrupt practice under section 123 (4) of the R. P. Act. In A.I.R. 1962 S.C. 1156 in the case of Inderlal V/s. Lalsingh, the Court held that when a statement is made that a candidate was the purchaser of the opponent of Congress by means of money, it clearly amounted to corrupt practice. Because in plain terms, it means that the candidate wanted to purchase votes by offering bribe. Bribery itself is a corrupt practice.

217. In A.I.R. 1964 Bombay 244 in the case of D. N. Patil V/s. D. K. Khanwilkar, the Court observed that when a statement is made that the candidate would conduct cases of villagers free and that the candidate arranged for assaulting the workers of other candidate, it would amount to corrupt practice under Section 123(4) of the R. P. Act.

218. The learned advocate for the respondent No. 1 has drawn my attention to A.I.R. 1976 S.C. 271 in the case of Harisingh Pratapsingh Chawda Vs. Popatlal Mulshankar Joshi, wherein the Court held that where a payment is not made for inducing to vote for defecting from Congress, it is not the corrupt practice. The definition of bribery does not cover this case. The statement at best may show an offence of bribery committed by a person who received the amount but no offence of bribery is made out if a candidate paid money to the workers to persuade the voters to vote for him. Where a gratification is paid to a person in order that he may induce others to vote for the bribe giver, it does not amount to bribery under the R. P. Act. However, that related to the offence of bribery.

219. Here what is to be scrutinised is whether the act on the part of a candidate creates an impression in the mind of a voter that the candidate wanted to pursue unfair methods to secure the votes. This is indeed the impression in the final analysis. In the case of Harisingh Chawda (supra), the Court held that the offence would be committed only by the receiver of the bribe. Indeed, therefore, if a candidate indulges in an act which may amount to abetment of the offence, I feel that such actions would come under section 123(4) of the R. P. Act. The allegations made in this behalf would certainly impress upon the voters that the candidate does not want to pursue fair means at the election.

220. In A.I.R. 1969 S.C. 734 in the case of Manubhai Nandal Amaray V/s. Popatlal Manilal Joshi and Others, the Court observed that the actual effect of the speech is not material. If the speech is calculated to interfere with the free exercise of electoral right and to leave no choice to the electorate in the matter, the statement would be corrupt practice. In considering the speeches, the status of the speaker and the character of the audience are relevant considerations. In A.I.R. 1961 Mysore 106 in the case of Sangappa V/s. Shivmurthi, the Court has laid down the essential ingredients of section 123(4) of the R. P. Act.

221. In A.I.R. 1965 S.C. 141 in the case of Kultabsingh V/s. Mukhtarsingh, the Court laid down the principle which has to be applied while considering a document and the same is :—

"The document must be read as a whole and its purported effect in a fair objective and reasonable manner. In reading such document, it would be unrealistic to ignore the fact that when election meetings are held and appeals are made by the candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exhorted language or adoption of metaphors and the extravagance of expressions in attacking another are all part of the action; and so, when the question about the effect of a speech delivered or pamphlets distributed at election meeting is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be consumed in that light. In doing so, however, it would be unreasonable to ignore the question as to what effect of the said speech or pamphlet would be on the minds of the ordinary voter who attends such meeting and reads the pamphlets or hears such speeches."

222. From this judgment, the deducible ratio that can be inferred is that, while construing a document or a speech, it should be studied or read as a whole and it must be found out as to whether which part touches upon the personal character and conduct and which assassinates the political character of the candidate. Now applying this ratio to the above statements, it would be found that all the statements which have been proved at several meetings give a clear impression that the petitioner wants to win the election only on the strength of money. He does not believe in any programme morality or ethics or principles. His only weapon is deployment of the wealth and to win over the voters from the poor South Nagar constituency. The mode by which the wealth is to be distributed is also indicated. In the first instance, a huge budget is set aside; in the second, huge

amount is given to a particular political party to secure its support and another sizable amount to the candidate to withdraw from Nagar and to contest from Beed; cycles are to be distributed; clothes and sarees are to be distributed; Chawadies and temples are to be renovated. To a voter, therefore, a clear impression is given in these statements that the petitioner has no fairness to win the election. His only weapon in his armoury is the wealth and to use in the most effective way and to bring the voters under the sway. The sway would be more effective because the population in general is extremely poor. This constituency is prone to permanent draught. If a small allurement is offered, the voters could be won over. Looking to all these statements, from any angle, there is indeed no escape but to hold that there has been the character assassination of the petitioner.

223. From the discussion in the foregoing paragraphs, it has to be concluded that the respondent No. 1 and Sharad Pawar did make supplementary statements of each other. Those statements can be enumerated as below :—

- (1) Petitioner was to spend Rs. 3 crores for his election;
- (2) Petitioner had paid Rs. 50 Lakhs to Janata Dal;
- (3) Petitioner had paid Rs. 20 Lakhs to Janata Dal candidate for withdrawing from Nagar constituency and to contest from Beed constituency.
- (4) Petitioner was to take out rally of 5000 cycles and distribute the cycles amongst the participants;
- (5) Petitioner was to spend for repairs of Chawadies and had sent Rs. 5,000/- for repair of Chawadi at Ganganagar, Tq. Newasa;
- (6) Petitioner was to distribute sarees, dhoties, liquor amongst the workers obviously with a view to attract them.
- (7) Voters must accept them and vote for congress.

224. These are the statements made by the respondent No. 1 and Sharad Pawar in various meetings. The foregoing discussion has clearly indicated as to what was spoken by either of them at different meetings. That portion would be again reconsidered at the end but suffice it to say that they would certainly touch upon the personal character and conduct of the petitioner.

225. Now coming to the question of above allegations being false and which the returned candidate believes to be false or does not believe to be true, it has been urged on behalf of the learned advocate for the respondent No. 1 that there is no pleading in that behalf and absence of pleading should entail dismissal of petition. My attention is drawn to A.I.R. 1990 S.C. 1731 in the case of Lalit Kishor Chaturvedi V/s Jagdish Prasad Thada and others wherein the Court held that if the pleadings do not contain the averments that the offending statement is false and that the same is believed to be false or is believed to be true then there is infraction of the provision. The matter would be without pleading and is liable to be dismissed.

226. Relying on this ratio, the learned advocate for the respondent No. 1 has contended that both should be pleaded; namely the statement is believed to be false or is not believed to be true and that one should be proved. This has been squarely replied by the learned advocate for the petitioner and rightly so, that the word "or" can not be equated with "and". The petitioner is entitled to plead either the statement is believed to be false or the statement is not believed to be true. If both are pleaded, there would arise uncertainty and that is the respondent facing the petition would not be able to take up any particular stand and lead evidence. Ultimately, onus to prove that the statement is believed to be false would be less than the onus to prove that the statement is not believed to be true. To prove that the statement is false would be easier than the statement is not believed to be true. Even the situation taken vice-versa would also be the same and if both these pleadings are allowed to prevail, the returned candidate would find it difficult as to what would be the nature of evidence he has to lead. Now if the petitioner succeeds in proving that the statement is false, naturally the onus

would shift on the returned candidate to show that he believed it to be true or that he did not believe it to be false.

227. In various cases cited above, it is held that the returned candidate should lead the evidence showing that the imputations made were correct or that it gave an impression that they could be correct. In this case, there is a clear averment of the petitioner throughout the election petition that both Sharad Pawar and respondent No. 1 knew that the statements were false. A cursory glance at the election petition would clearly show that all the publications A to K and all the publications L to P are known to be false and that can be seen from paragraphs 16 and 17. Apart from that, it is the substance of the averment that has to be taken into consideration. All that is enjoined upon the petitioner is to lay foundation to show that the statements were false and that they were known to be false or not true. I, therefore, see no merit in this argument and proceed to hold that the petition can not be dismissed on this objection. This aspect would be touched while dealing with general objections raised by respondent No. 1 and notice.

AGENCY AND CONSENT

228. The petitioner in this petition has contended that Sharad Pawar was invited to participate the election meeting of congress candidates both from South and North. He spoke on behalf of respondent No. 1 and Kale from North constituency in the first meeting of Newasa Bazar Tal on 3-5-91. He spoke for respondent No. 1 in the meeting at Shrigonda on 11-5-1991. The learned advocate for the notice and the learned advocate for the respondent No. 1 have contended that no consent by agency can be inferred. There is no statement by any of the witnesses that Sharad Pawar spoke with the consent of respondent No. 1. The learned counsel for the notice has gone to the extent of arguing that even presence of the respondent No. 1 at these meetings appears to be suspicious. However, he has ignored one important fact that even respondent No. 1 did not dispute participation of Sharad Pawar at the above meetings. The presence of respondent No. 1 at both the meetings is not disputed.

229. The undisputed facts are that Sharad Pawar is one of the leaders of congress. He holds important position in Union Cabinet as well as State Cabinet but basically he is a member of Congress (I). The respondent No. 1 is the candidate sponsored by Congress (I) party and the settled position of law in this behalf is to be found in various rulings and the said position has not been reversed in any of the judgments of the Supreme Court. In 1960 Maharashtra Law Reporter in the case of Trilokchand V/s. Shivaji, it was observed by the Election Tribunal Lucknow as follows :—

"It is a well settled principle of law of agency in elections that if the candidate has been set up by a party, the party itself as well as his prominent members must be held to be responsible, because by agreeing to stand up a candidate of a party, he himself agrees with the party and its prominent workers who are engaged to promote his party. In such a case privity between the party and the candidate shall have to be presumed and the candidate can not lightly escape from the responsibility attached to the acts of the member who worked as agent on the ground that he did not consent to the speeches given by the members."

230. In A.I.R. 1950 Asam 200 in the case of v/s. Abdul Hameed Chaudhari, the High Court observed that any association of persons or society of political party, its permanent members who set up a candidate sponsored are agents.

In such case, direct evidence of consent will not be available. Agency however should be deemed to have been established by virtue of the fact that the candidate is a member of the political party. He is impliedly introduced as a sponsored candidate by them. The same ratio is referred in A.I.R. 1961 Rajasthan 122 in the case of Inderlal V/s. Lalsingh. The Court observed that where the members of the party committed corrupt practices, the Tribunal assumed that the returned candidate was guilty of the corrupt practices by the

agent and declared the election void. In A.I.R. 1969 S.C. 1201 in the case of S. N. Balkrishna V/s. George Fernandes, the Supreme Court reiterated the general duty cast on the election petitioner that corrupt practices must not only be established but must be proved to have been committed with the express consent of the candidate or his election agent. In para 47 of the judgment, the settled principles of law are laid down and they are :—

“Consent may be inferred from circumstantial evidence but the circumstances must unerringly point to the conclusion of the corrupt practices being committed by the candidate or his agent.”

231. From the foregoing judgments, it will be manifest that when the party members sponsor a candidate, they become agents for the candidate and the returned candidate can not escape the responsibility of corrupt practices if committed by the members of that party. In this case, it would be found that Sharad Pawar came to campaign these of respondent No. 1 at both the meetings. He spoke in many more words that the voters must vote for respondent No. 1 and in that process, he dilated upon the activities and position of the petitioner. The respondent No. 1 and the notice now can not be heard to say that there is want of express consent by respondent No. 1 in regard to the speeches delivered by Sharad Pawar.

INTERVIEW DATED 10-5-1991

232. The next interview of respondent No. 1 is dated 10-5-1991 at Circuit House Ahmednagar by reporter Girish Kulkarni of Maharashtra Times. The interview was published in Maharashtra Times. Girish Kulkarni is M.A. from Poona University. He has completed his Diploma in Communication and Journalism, Diploma in Labour Laws from the same University. He has appeared for Diploma in Business Management of the same University. This would show that Girish Kulkarni is an educated person. He has been the reporter for Maharashtra Times and has stated that he has been issued Accreditation Card by the Government by which he is entitled to approach anybody and interview him. He has been working for Maharashtra Times and Maharashtra Herolas, Books. He had interviewed respondent No. 1 on 10-5-1991. He posed several questions and the answers were recorded by him. The interview has appeared at Exh. 90 in Maharashtra Times in his name. He has stated that respondent No. 1 stated in Portion A-1 to A-1 in response to question No. 3 that Mrinal Gore of Janata Dal had refused to support the candidate who was denied congress ticket. Still Janata Dal supported Vikhe Patil. As soon as petitioner Patil chose to contest as an “Independent”, Janata Dal extended its support. That is because Janata Dal candidate Kolse Patil withdrew from this constituency.

233. According to Kulkarni, respondent No. 1 stated that he had learnt from reliable sources that petitioner had paid Rs. 50 Lakhs to the party and Rs. 20 Lakhs to Kolse Patil for withdrawing from Nagar and contesting from Beed. Petitioner had collected Rs. 3 crores for election because this was his prestigious election and this was question of his political existence. He also stated that petitioner was to distribute huge wealth, dhoties, liquor bottles amongst the voters. It is only thereafter that he can hope to succeed. He also stated that the petitioner had offered monetary allurements to the village level workers and was thus encouraging defection of the workers from congress party. He also stated that the petitioner was donating funds for public activities in various villages but this can hardly be the ways for winning the election. The petitioner in the petition has stated that these allegations were false. Respondent No. 1 in his written statement has denied that he had made such statements. His main plan has been that he did not make such statements. Only he has been hearing such rumours from the workers.

234. Girish Kulkarni has been cross examined at length. He is unable to say as to whether Sopan Darandale, Balasaheb Tanpure and Sudhir Mehta were present. He does state that some persons were present. He had formulated about five questions and had put vacant space in proportion to

the expected answers. He had not taken out xerox copy of the questions. He has stated that the respondent No. 1 is a literate person and that his answers did not need any dressing up. He claims to be the worker of Akhil Bhartiya Vidyarthi Parishad, which according to him, is not the wing of B.J.P. However, as far as it is known, A.B.V.P. is the wing of B.J.P. He is the distant relation of the former Minister Madhu Dandwate. He has been cross examined on various questions and it is tried to be established that whatever has been recorded by him is not the faithful account of the interview. But when one looks to the questions and answers, one can certainly gather that there does not seem to be any dressing up or fabrication. The straight question has been put regarding allegations by the respondent No. 1 about the corrupt practice by the petitioner. Respondent No. 1 gave the extensive answer which has been reproduced herebefore. Kulkarni has categorically denied that he put up question regarding the rumours. This is because he has been reading the newspapers where in the respondent No. 1 had levelled direct allegations against petitioner. This answer would further strengthen the story of the petitioner that the respondent No. 1 has been making reckless and wild allegations touching upon the personal character and conduct of the petitioner.

235. He admits to have attended the press conference by the petitioner which was called for thanks giving after the elections. He was there for only one hour. He has denied that any gifts were given by the petitioner to the persons present. He has also denied that he is under the influence of the petitioner. He has denied that Sudhir Mehta is his college colleague. He is also unable to say as to whether Sopan Darandale works as a reporter for Maharashtra Times at Sonai. It would be seen from Exh. 182 that Sopan Darandale is also the reporter for Maharashtra Times but one can not lose sight of the fact that this interview has been published in the name of Girish Kulkarni. The main defence that has been put up in that the respondent No. 1 soon wrote Govind Talwalkar—the Editor of Maharashtra Times—complaining that the above article did not reflect the correct questions and answers. The rumours had gathered by him from the workers but he never said that the petitioner was committing corrupt practices as suggested in the Maharashtra Times. The learned advocate for the respondent has contended that this letter should wipe out all that is said by the respondent No. 1 against the petitioner.

236. It has been urged by the learned advocate for the petitioner that this is nothing but an eyewash. Although there is certificate of posting at Q-1 about letter Q dated 16-5-1991, there has not been any response from the editor of Maharashtra Times. In that letter, it is positively stated that the correction must be issued by the Maharashtra Times but the same has not been done. The Editor did not reply to respondent No. 1 and the respondent No. 1 did not take any action against the editor or Girish Kulkarni. It appears that certificate of posting and the letter do not appear to be truthful. They are the documents which do not seem to have passed the routine course of despatch and delivery. The editor of Maharashtra Times did not even acknowledge the letter although it has been the letter from a Member of Parliament of the ruling party. It is unlikely that the editor of the newspapers would give a cold response to the complaints made by the Members of Parliament and that too a Member of Parliament of the ruling party. Ultimately the newspapers can not afford the inveterate wrath of the Members of Parliament. If, therefore, had this letter been genuine, the editor of Maharashtra Times would have certainly responded to that letter, either modifying the interview or expressing his inability to make any correction. Nothing has been done. Girish Kulkarni has stated that he has not been prosecuted or censored by the editor of Maharashtra Times. I, therefore, feel that for all these reasons, Exhs. Q and Q-1 can not establish that respondent No. 1 had complained about the falsity of the above newspaper answers to the questions posed by Girish Kulkarni. It is also not shown that Girish Kulkarni has not been contacted although Kulkarni stays at Nagar.

237. Of course, Mehta in his deposition has stated that nothing of the sort was spoken by the respondent No. 1. But it is held in foregoing paragraphs that Sudhir Mehta is on intimate terms with the respondent No. 1. Various photographs have been pointed out in support of this proposition. I, therefore, feel that the evidence of Mehta can not overwhelm

the veridice of Girish Kulkarni. Even Sopan Darandale could have been examined by respondent No. 1 because Darandale enjoys good reputation as stated by the witnesses of petitioner and respondent No. 1. I would, therefore, prepare to accept the interview as reported in Maharashtra Times at Exh. 90. Kulkarni has stated that he does not possess the originals but he has been bold enough to say that the interview has been published in his name and not in the name of anybody else. As he is in possession of accreditation card of the State Government, he has a right to approach the leading personalities and take their interviews. If in that background, Girish Kulkarni has recorded the interview at Exh. 90, the same can not be dismissed as lacking the truth, on the suggestions of respondent No. 1 merely because Kulkarni is related to the then Union Minister Madhu Dandwate, it is unlikely that as a reporter, Kulkarni would side with any political party. It is the duty of the reporters to give publications to those news which are believed to be true. It would, therefore, not be proper to say that Kulkarni has abandoned this path of truth and has put up the oblique version of the interview given by respondent No. 1. I, therefore, hold that in this interview, it is established that respondent No. 1 spoke that the petitioner had paid Rs. 50 Lakhs to Janata Dal; Rs. 20 Lakhs to Polse Patil for withdrawing from Nagar and contesting from Beed; that the petitioner had collected Rs. 3 crores for election; that the petitioner would distribute dhoties, sarces and also would distribute money amongst the workers. He had also held out allurements to the village level workers and taluka level workers. These are indeed the allegations which touch upon the personal character and conduct of the petitioner.

SHRIGONDA MEETING DATED 11-5-1991

238. This meeting has been relied upon by the petitioner in proof of the charge of corrupt practice under section 123 (4) of the R. P. Act. In that regard, in the election petition petitioner has stated that on 11th May, 1991 at Shrigonda at 8.30 P.M., there was a meeting in furtherance of the election campaign of respondent No. 1 and the same was to be addressed by the then Chief Minister Shri Sharad Pawar. According to the petitioner, he has been all along loyal to Indian National Congress and again went with Congress (I). The petitioner was the Member of Zilla Parishad Nagar from 1962 to 1971. He was the Vice President of Zilla Parishad upto 1971. He was also the Member of Parliament from 1971 to 1989 and was elected five times but due to differences with the leaders of the congress party, he was not granted nomination in the election of 1991 and, therefore, he chose to contest the election to the Parliament in 1991 as an independent candidate. Chief Minister Pawar, making reference to the above facts, spoke that the petitioner was contesting this election although he was brought up by congress party. He was asked to wait but he chose to contest as an independent candidate. Pawar positively indicated that he was not worried about the B.J.P. candidate because the B.J.P. candidate was to lose. He was only concerned with the independent who was adopted by Janata Dal for the purpose of this election. He refused to wait when being asked by the party high command. On the contrary, he chose to fill the nomination forms from Nagar and Kopergaon. However, as he saw that his support in North was poor, he chose to contest from South Nagar constituency, which is a famine prone region and where the people are largely poor. Petitioner felt that he can pocket them on the strength of his wealth. He desired to take over the Maharashtra through this constituency and started to play the game of purchasing the voters and their self respect.

239. Sharad Pawar spoke that petitioner should be defeated and that he should be impressed upon that money alone can not be the important motivation in this election. For the election, ideology, policy, programme and morality are absolutely necessary. It is wrong to give up the moralities, when one's wish is not fulfilled. It is also wrong to leave the party, its programme and colleagues when a favourable decision is not taken in the matter of nomination. It was as if a woman having Kumkum by one husband looks at the other and thus becomes a woman of questionable fidelity. If the people look upon this situation, then the possibility can not be ruled out that attention would be drawn to all such questions as to what benefit the voters are likely to get from the leaders coming to South; whether the village Chawadies will be repaired; whether the temples would be renovated; whether voters would get motorbikes or at least cycles for riding? Sharad Pawar spoke that this

was not in the interest of the voters but it should be accepted because it is the socialisation of wealth, which the person has collected by oblique ways. He advised the voters to accept those things but to vote for the congress.

240. The petitioner has contended that this speech was tape recorded by Advocate Ashok Bapusaheb Jamadar of Hopargaon. Dr. Avinash Joshi of Loni transcribed it and the same has been exhibited at O. The copy of the cassette has been supplied to the respondent. Amongst the persons, who attended the meeting, are Mahadeo Bala Sumbe of Belanwadi Kothar, Tq. Shrigonda; Pandurang Sonali Kale of Adalgaon; Keshavrao Chintaman Kable of Mhatar Pimpri, both of Shrigonda taluka. They informed the petitioner about this meeting. Although Sharad Pawar did not speak about the name of the petitioner, his statements were in the nature of innuendo. The first respondent never objected to these statements and the petitioner has contended that these statements were known to be false within the knowledge of the respondent No. 1 and Sharad Pawar and this respondent No. 1 has committed corrupt practice under section 123 (4) of the R. P. Act.

241. Respondent No. 1, in his written statement at Exh. 5, has contended that Sharad Pawar did not make any statement touching upon personal character and conduct of the petitioner. Sharad Pawar did speak about various national problems. The witnesses named by the petitioner are interested witnesses. Jamadar has worked for petitioner in the election. Sumbe had also worked for the petitioner and the evidence led on behalf of the petitioner is not satisfactory. It may be stated so far as the tape recording of the speech of Sharad Pawar is concerned there is no denial that Ashok Jamadar recorded the same tape. Petitioner, in his evidence at Exh. 15, has adverted upon what is pleaded in the election petition but when one looks to the evidence of respondent No. 1 at Exh. 328, the respondent No. 1 has stated in para 41 that the meeting was arranged at Shrigonda by Taluka Congress Committee. Sharad Pawar came there at about 9.15 a.m. He had accompanied him from Karjat to Shrigonda and there was arrangement of loudspeaker, which was provided by Shirke. The loudspeakers were put at a distance of 30' to 40' from the dais. Sharad Pawar discussed the national issues in his speech. He also adverted upon Kashmir, Punjab and Assam problems. He further stated that if at particular village, 70 to 80 per cent voting takes place in favour of respondent No. 1, he would personally visit that village and share tea with those villagers.

242. According to respondent No. 1, Sharad Pawar did not make any personal charges against the petitioner in the meeting at Shrigonda. The portions marked A-1 to A-1 in the transcription at Exh. 56-A is not correct and was not spoken by Sharad Pawar. Bhausaheb and Ashok Jamadar are the active workers of the petitioner. They are in his politics for the last 25 to 30 years. Bhausaheb Jamadar was elected as the President of Taluka Panchayat Samitee on the support of the petitioner. Respondent No. 1 claims that he did not know Mahadeo Bala Sumbe and others but so far as Avinash Joshi, Narayana Joshi and Shankar Joshi are concerned, they are the office bearers of the educational institutions run by the petitioner, however, in the cross examination, in para 190 of the evidence, respondent No. 1 has practically conceded that he had not specifically pleaded in the written statement that there was dubbing of voice of Sharad Pawar in the cassette at Exh. 56. The audio cassette was supplied to him along with the copy of election petition. He denied the transcription specifically. However he did not state in the written statement that the audio cassette was not in the voice of Sharad Pawar in respect of the disputed portion. He heard the cassette only after the evidence in the Court stated and it is at that stage that he could gather that the voice in respect of the offending statements was not that of Sharad Pawar.

243. When questioned further, he is unable to give the date on which the evidence started. He has stated that he had disclosed it to his advocate that the disputed portion in the audio cassette was not the voice of Sharad Pawar. But looking to the fact that he saw the transcription but did not hear the audio cassette before commencing of the evidence, respondent No. 1 now can not be heard to say that the cassette was not recorded by Jamadar. This is the

minium admission which can be inferred from the written statement as well as the evidence of respondent.

244. Now so far as the meeting at Shrigonda on 11-5-1991 is concerned, there is evidence of P.W. 2 Mahadeo Bala Sumbe at Exh. 53; P.W. 3 Ashok Bapusahab Jamadar at Exh. 55; respondent's witness No. 4 Raghunath Babasaheb Shirke at Exh. 188 and witness No. 8 Rajendra Shivaji Gaikwad at Exh. 252. Whereas the witness for the petitioner have supported the allegations made by Sharad Pawar, Shirke and Gaikwad have tried to obliterate them by deposing that Sharad Pawar did not speak touching upon the personal character and conduct of the petitioner.

245. So far as the evidence of Mahadeo Bala Sumbe is concerned, it would be found that he claims to have attended the meeting and heard the allegations levelled by the Chief Minister that the petitioner was to spend money, distribute cycles and motorcycles and dhovies, he was also to construct Chawadies at various places and so renovate the temples. Sharad Pawar advised the people to accept all these things but to vote for Congress. He also spoke that the population of South was poor and that the petitioner could easily purchase the voters. Sharad Pawar also spoke that the petitioner was given ticket on five occasions to contest the election for a seat of Member of Parliament but as soon as the nomination was denied to him at this time, he chose to contest as an independent candidate. Pawar also spoke by way of illustration that Christ went to congregation on a donkey and the donkey felt that he was important and tried to remain on the stage but was driven out. This symbolic phrase was directed against the petitioner.

246. However, in the cross examination, he has stated that he had canvassed for petitioner for 4 to 5 days. On the previous occasion, he had canvassed for the Congress nominee. He has stated that Pawar did not give abuses to the petitioner nor talked about him in filthy terms. He also stated that he was the polling agent for the petitioner. He is unable to say as to whether Sharad Pawar spoke in the beginning or at the end. Now looking to the evidence of Sumbe, it would be obvious that he had canvassed for the petitioner. He is obviously an interested witness and it may not be, therefore, safe to rely on his evidence. But when one goes to the evidence of Ashok Bapusahab Jamadar at Exh. 55, it would be found that he is a double graduate and also a practising advocate. He is the Sarpanch of village Kopangaon. He has stated that he had heard the meeting of Sharad Pawar on previous occasions. He attended the meeting of Sharad Pawar on this stage at Shrigonda on 11-5-91. The said meeting was on the ground near Shaikh Mohammad Baba Mandir. Although the time was 6 p.m. Sharad Pawar came between 7.30 to 8 p.m. He had gone to the house of his uncle Mohanrao Jamadar, which was in front of the above ground. The distance between the dais and the house was 800'. He was sitting on the terrace and he heard the speeches, more particularly that of Sharad Pawar. He tape recorded the speech and the tape is at Exh. 56. The transcription is at Exh. 56-A.

247. Sharad Pawar spoke that originally the petitioner belonged to Congress. He was brought up by Congress. He was Zilla Parishad President and was given Congress ticket for Membership of Parliament for five occasions and in spite of being asked to wait at this time, he did not wait out filed his nomination as an independent candidate from Kopargaon and South Nagar. When he found that the atmosphere was hostile in Kopargaon, he left that constituency and came to South Nagar because the population in this constituency is poor and could be easily bought over and pocketed. He also spoke that the petitioner applied kumkum on his forehead but looked at other person. If the people get cycle or motorcycle, they should accept the same. Jamadar has stated that this was with reference to the petitioner. Sharad Pawar also cited the instance of Christ going on a donkey and the donkey feeling the importance at the congregation. This was anological to Babasaheb's feeling that he was an important person, when as a matter of fact, it was the party that was important and not individual.

248. Jamadar has stated that in this speech, he felt that

the image of the petitioner was lowered. He has admitted that the petitioner never distributed cycles or motorcycles, clothes or did not offer any allurements to the voters. He has further stated that the tape was given to the petitioner. Petitioner asked Avinash Joshi to transcribe it and the transcription is at Exh. 56-A. In the cross examination, it is sought to be established that Joshi has worked for the petitioner. It is, however evident from the list of counting agents that Avinash Joshi was not the counting agent for the petitioner. It may be that his father and Mohanrao Jamadar might be connected with the institutions of the petitioner. Ashok Jamadar has denied that there was no loudspeaker near the house of Chandmal, which belongs to his uncle. He has stated that he owns Sanyo Taperecorder and he had recorded the speech of Babasaheb Purandare about Shiv Charita. He had also recorded the speeches of Shivajirao Bhosale Vice Chancellor of Marathwada University. He had also recorded the Kirtan by Balyogi at Kopargaon and he was in possession of the cassettes of the taperecord. He is unable to say on what part of the cassette the speech was recorded. He has, however, stated that he can understand and recognise the voice of Sharad Pawar.

249. He has denied that he did not attend the meeting. He has also denied that he was the polling agent of the petitioner. He has claimed in his cross examination that he is the Sarpanch of Kokangaon and he did not hear about the petitioner distributing money amongst voters. He has stated that the contents of the tape are correct.

250. While assessing the evidence of Jamadar, it would be abundantly clear that his evidence is corroborated by the tape which is to be found at Exh. 56. It is not proper to conclude that he is the stooge of the petitioner. On the other hand, the evidence of Jamadar clearly shows that he had attended the meeting. He heard the speech and recorded it in the tape. He had identified the voice of Sharad Pawar.

251. In this regard, the Supreme Court in A.I.R. 1973 S.C. 157 in the case of Malkani V/s. The State of Maharashtra has observed that the tape recorded conversation is admissible provided the conversation is relevant to the matter in issue; that the identification of the words and that the accuracy of conversation is proved by the person. There is possibility of erasing the taperecords and that is why this guideline. It is relevant being contemporaneous record under section 8 of the Evidence Act. In A.I.R. 1975 S.C. 1788 in the case of Ziauddin Bukhari V/s. Brijmohan Mehra, the Supreme Court observed that taperecorded speeches are documents as defined in section 3 of Evidence Act and that they do not stand on any different footing than the photographs. They are admissible in evidence if the voice of the speaker is identified and if there is accuracy of what is being recorded and that the subject matter of recording is relevant. The Supreme Court observed that the taperecords are the primary evidence of what is recorded. The transcription can be used to show as to what the transcriber has found at the time of transcription. While scrutinising the speech, the relevant part thereof in the tape can be well relied upon. As indicated, Jamadar has stated that he had heard Sharad Pawar on several occasions and that the tape Exh. 56 contained the speech delivered by Sharad Pawar at the above meeting at Shrigonda.

252. Dr. Avinash Joshi at Exh. 73 has transcribed this tape at the instance of the petitioner. He has stated that it took about 3 hours to transcribe it. The speech at pages 138, 139, 140 to 143 of the petition is that of Sharad Pawar. He has denied that the offending portion A to A is in fact in the voice of Sudhir Bhosale. When this suggestion was made at the behest of respondent No. 1, respondent No. 1 should have examined Sudhir Bhosale but the same has not been done. In the cross examination, Joshi is shown to be the worker of the petitioner but there is no clinching evidence to infer that he is hand and glove with the petitioner. The suggestions are made about his involvement in the affairs of the petitioner though other relations but I feel that so far as the transcription of the tape is concerned, the same cannot be doubted when Joshi has stated that the transcription at

Exh. 56-A is the correct transcription of the speech of Sharad Pawar at the above meeting. He is the practising doctor and should not be disbelieved in regard to transcription on the above suggestion.

253. As against this, respondent No. 1 has denied the speeches. His witness Shirke has deposed that he had provided the dais and microphones. The loudspeakers were put at the distance of 30' to 40' from the dais and the loudspeakers on the polls were put up at a further distance of about 40'. He has stated that Sharad Pawar did not utter the statements touching upon the personal character and conduct of the petitioner. However, in the cross examination, he has stated that Sharad Pawar spoke about Kashmir and other problems. He also spoke about the sacrifice of Indira Gandhi, who was assassinated by the terrorists. He also adverted to other parts of the speech of Sharad Pawar. However, in the cross examination, it will be found that this witness is connected with the congress party. He has tried to support the evidence in the Recrimination Petition but has miserably failed to identify the place from where the bottles were seized.

254. Photographs Exhs. 191 and 194 have been mixed with photographs Exhs. 192 and 193. They relate to different premises and if this witness tried to show that liquor was found from these photographs, one will have to conclude that Shirke really does not know from which place the bottles were seized, either from the house of Gundecha or house of Mehta. The bottles were seized from the single storied building whereas the building which carries banner of the petitioner is a double storied building. Shirke also speaks about Ashok Jamadar and others. In his cross examination, he has stated that he had been prosecuted in two cases; one in relation to assault on the Managing Director of sugar mill in his office and the other under section 324 I.P.C. The charge sheets are at Exh. 196. There is a decree of about Rs. 1,50,000 against this witness and the decree is at Exh. 200. He has stated that he used to take contracts for road construction for the sugar factory. He has stated that in the photograph at Exh. 198, he is seen along with others in a big crowd. He was the member of Made Wadgaon Multipurpose Society. However his membership was terminated because of his dues to the society. He has not cleared off the dues of Rs. 34,000 and odd of this society. He is also indebted in respect of a tractor loan. He was also given notice at Exh. 199 about recovery. The decree is passed to the tune of Rs. 1,56,000. He also got refund of income tax without filing the returns.

25. He has further stated that he does not hold any document to show that he has been carrying out the business of decoration. He was paid Rs. 4,200 for this pendal and microphone but he has not been able to tender any bill or voucher in support of that claim. He has stated that the reports appearing about this meeting in Sarwamat at Exh. 203 and Gaonkari at Exh. 202 have not been disputed by the party. Presumably, therefore, this witness read those reports. To those reports, I shall come later while discussing the speech but suffice it to say that the speech by Sharad Pawar was reported in the above papers and on scrutiny, it would be found that some statements have bearing on the personal character and conduct of petitioner. He has tried to show that the loudspeakers were not put in front of the house of Divate, where Jamadar was sitting.

256. He has denied that he had canvassed for respondent No. 1. But his other admission in relation to Nagode would rather show that he is connected with the ruling party. His evidence cannot be accepted on several grounds and that is he is indebted to the bank; he is indebted to the society; he is involved in criminal cases; his association with the party is apparent and I, therefore, feel that the evidence of Shirke can not establish that Sharad Pawar did not speak about the petitioner.

257. The other witness Rajendra Shivaji Gaikwad at Exh. 252 has also tried to toe the line of Shirke by stating that Sharad Pawar did not make any offending statement. He

spoke about Indira Gandhi and other national problems. He has talked about the liquor bottles found from the office of the petitioner at Shrigonda. In the cross examination, he has stated that Prakash Kisan Gaikwad is his relation and in photograph Exh. 253, he is seen speaking before the gathering about the election of Prakash Gaikwad. Prakash Gaikwad has been sponsored by congress party. Prakash had abstained from voting when an independent candidate whose defeated congress candidate. I photograph Exh. 253, he has stated that Shivajirao Nagode was seen. In the report Exh. 254, it is shown that Prakash Gaikwad was declared as unopposed and that he was of Nagode group. This witness got admission to the polytechnic institute on the management quota and the same is run by Nagode group, which is of congress.

258. He has been cross examined with respect of other parts of the speech. He has stated that Sharad Pawar uttered that the real contest was between the congress candidate—respondent No. 1 and independent candidate—the petitioner. He was referred to portion A to A in the transcription at Exh. 56-A but he has stated that the Chief Minister did not utter that portion. He has admitted that in Sarwamat Exh. 202 and Gaonkari Exh. 203, those portions have been reproduced. He admits that he likes congress party although he is not its active worker. He has stated that he did not complain in writing to any of the editors of the above papers challenging the publications of the allegations which were not uttered by the Chief Minister. He owes Rs. 1,66,250 to the Land Development Bank. He could not show the identity of place from where the liquor bottles were seized. The evidence of Gaikwad also does not inspire confidence. Firstly he loves congress; he is also of Nagode group; he got admission to the polytechnic institute run by Nagode group and these are the obligations which must have driven him not to disclose the truth which is detrimental to the interest of respondent No. 1.

259. The sum and substance of foregoing discussion would be that Ashok Jamadar recorded the speech at Exh. 56 and the same has been transcribed by P. W. 4 Avinash Joshi. The offending speech has been marked in Exh. 56-A and the same can be reproduced for appreciation. The relevant portion is as follows :—

“Who is contesting this election against us ? On one side, there is Rajiv Gandhi and his candidates trying to save the country, on the other side are some people trying to secure votes in the name of religion and some other candidates; on the third side, there is someone who want in adoption somewhere because it was not possible for him to wait when the party told him to wait for some time and the third candidate who is contesting the election with their support has left his constituency and came here thinking that this is a soft electorate. I am not worried about B.J.P. candidate in this constituency because he is going to loose. He too is aware of this. The question is different namely what to do about the adoptive candidate who was raised by the congress, made the Member of Parliament five times and office bearer of Zilla Parishad on one occasion. When he was asked to wait a little, he lost patience and began searching. He filed nomination from Kopargaon and also from Nagar. He adopted a stand of interested party namely to repel his South constituency but while performing that roll, he saw that he could not get an opportunity in the North. So the idea entered in his mind that this South constituency being a famine prone region and the people there being poor, he could pocket them. So he started acting this in this part with a view to take over Maharashtra from here and win the election by the efforts of interested parties by playing a game of purchasing your self-respect. We must face it and defeat such activities. This is a task to be done in this election. At some time on the other, you will have to tell them that money alone can not be an important motivation in the election. What is needed is ideology, policy, programme and morality. It is wrong

to give up morality when one's wish is not fulfilled, to leave the party, programme and colleagues when a favourable decision is not taken and to join hands with other party. Once the Kunkoo (sacred red powder indicating matrimony) is applied, its sanctity must be maintained. But we did not find that Kunkoo was being applied in the name of one person and the eyes were looking at somebody else. It is good that this has happened. As I have become aware of it (such things) and once people come to know of it, their views about such a person remain limited to a specific purpose. Then the possibility can not be ruled out that the attention would be drawn to all such questions like—what benefit we will get, which leaders are coming to South, will the village Chawadi be built, will the temple be renovated, with the motorbikes, be available for riding, will bicycles at least be available for riding? It is not in your interest and my interest to accept the same. It will not be in our self respect but it must be accepted. I say that the reason for this is whatever comes, will be coming out of the resources of the society. If the process of distribution of social wealth has taken, it is very good and in the interest of establishing socialism in this country. Take the same wealth and use it against them. If you could do this sincerely, then I am sure that all those people will realise that people of South are poor but their attitude is different. The decision has to be taken whether one should act on principle or disloyalty, whether one should act according to morality or immorality, according to humanity or in organs of money as power."

260. The learned advocate for the petitioner has contended that although there is an attempt to intermix the political image with the personal image of the petitioner, the statements touching upon the personal character and conduct of the petitioner can well be deciphered and they are that the petitioner was trying to purchase the voters on the strength of money. The petitioner felt that South constituency is prone to famine. The people are generally poor and that the petitioner thought that with the help of money, he can purchase the voters. It is also indicated in this speech that if the voters feel that this can be possible, they can very well look for the repairs of Chawadies and temples, cycles and obtain that money.

261. The learned advocate for the notice Sharad Pawar has conceded that the references are only to the petitioner. Now if these statements are closely scrutinised in their correct context, they would mean that the petitioner has become wealthy; that petitioner wanted to purchase voters from the draught prone constituency; he also wanted to purchase the self respect and the mode which he wanted to employ is to distribute cycles etc., repairs of Chawadies, temples etc. It is, therefore, felt that this speech portrays the petitioner as a person who would like to deploy the huge wealth in the success of his election. He has no moral principles. He has no ideology or programme. He has faith only in wealth and with this wealth, he wanted to run over this constituency and win the election.

262. All these remarks are essentially reflecting upon the personal character and conduct of the petitioner. There is no escape from this conclusion. There is no other way to interpret this speech. It is impossible on any reckoning to hold that these remarks relate to the political image or character of the petitioner. When one talks of wealth, its distribution amongst voters, an inevitable conclusion has to be drawn that the attack is personal and the idea is only to malign the personal character and conduct of the petitioner. The arguments contrary to this inference cannot be countenanced. Use of wealth in winning the voters has to be inferred from all that has been said by the speaker. It can, by no means, be said that these remarks are aimed at political character assassination of the petitioner. They cannot be read in juxtaposition with the allegations that the petitioner collected huge wealth after election as a Member of Parliament of Congress Party; that he amassed wealth on the basis of his authority and that he employed the same in winning his election. There are no inferences which can be drawn. They are the acts

which have been imputed to the petitioner and one can not escape by arguing that these are the inferences which can be drawn from the activities of the petitioner. On the other hand, these statements are direct attack on the personal character and conduct of the petitioner. The petitioner is shown to be reckless. He is described as a person who only knows to win the voters without any programme, without any morality. Ultimately what is to be gathered is the impression which is likely to be created on the voters and the impression would be that petitioner is determined to win election on the strength of wealth.

263. It can not be lost sight of that in Exh. 202 Gaonkari Dated 14-5-1991, there are recitals A to A and B to B which tell upon the personal character and conduct, as has been inferred from the tape recorded speech of Sharad Pawar. They contained the facts about poverty of the population in South constituency. Petitioner was trying to purchase their votes with the strength of money. The same recitals are also found in Sarwamat Exh. 203. These have not been denied by the party nor by respondent No. 1. Although the respondent No. 1 has stated as usual that he came to know about these publications recently, his statement to that effect has to be discarded as incredible. There were several members of his party who claimed to have read over those papers from time to time as and when published. It was, therefore, unlikely that respondent No. 1 would not read these papers. Absence of denial of the incriminating statements made by Sharad Pawar would strengthen the arguments on behalf of the petitioner that as portions were cast on his personal character and conduct in the speech made by Sharad Pawar.

264. The following inferences can be legitimately drawn from the speech of Sharad Pawar—

"Petitioner felt that he had no chances of winning from North. He chose South which is poor and draught stricken. Petitioner could pocket them. Petitioner started game of purchasing voters. Petitioner must be told that money alone cannot help. He must have ideology, programme and morality. Money can be the only motivation. Once people think that these are the moves, they would look for motorbikes, bicycles, repairs of Chawadies and temples. People must accept these things, as it would be decentralisation of wealth."

These inferences clearly touch on the personal character and conduct of the petitioner.

ASSESSMENT OF THE EVIDENCE OF RESPONDENT NO. 1

265. The evidence of respondent No. 1 was recorded at Exh. 328 and it runs in about 271 pages comprising of 258 paragraphs. During the course of this evidence, respondent No. 1 was shown several newspapers, photographs and he admitted them to be correct. This became necessary because the learned advocate for the petitioner had tried to bring to his notice some events which reflected upon his political career, his mode of fighting elections and his attempts to run down the prospects of his opponents. It is also suggested that the respondent No. 1 in the first blush would deny such allegations but then would admit them when shown the newspaper cuttings photographs were necessary in order to point out that he was closely connected with the certain Congress leaders all along although he was denying that he was not.

266. The learned advocate for petitioner has vehemently urged that the respondent No. 1 thoroughly stands discarded when one scrutinises his evidence. Respondent No. 1 has been shifting his political loyalties as and how it suited him. He had also definite mode of campaign in almost all elections and that was to allege corrupt practices against the candidate either contesting against him or against his group. The respondent No. 1 even went to the extent of physically threatening his opponents and also has been lodging complaints to the police in order to bring down the opponent in the esteem of the voters.

267. Undisputedly, respondent No. 1 has been the founder Chairman of Mula Sugar Factory and the said factory has been a close ally of Dnyaneshwar Sugar Factory headed by Marutirao Ghule Patil. These factories are situated in the Parliamentary constituency of the respondent No. 1.

268. Respondent No. 1 has been consistently attempting to disown close acquaintance with the reporter Darandale only with a view to show that the reports on which some news items, incriminating him in corrupt practices, were written by Darandale and that Darandale has not been examined and the evidence of the newspaper reporters is a hearsay evidence. The following pieces of evidence negatives the contentions of respondent No. 1 that he is not close to Darandale.

269. In Sonai meeting dated 30-4-1991 the utterances given by respondent No. 1 were recorded by Darandale. Admittedly, Darandale has not been examined by the petitioner on the ground that Darandale is virtually the spokesman of the respondent No. 1 and there was no likelihood of Darandale telling the truth in this behalf. In paragraph 24 of his evidence, respondent No. 1 has admitted that Sopan Darandale was present at the Sonai meeting. In photographs Exhs. 210, 211 and 212, Darandale is seen along with Bhavyasaheb Deshmukh. Respondent No. 1 has admitted in paragraph 34 that Sopan Darandale is a press reporter but he has no concern with Mula Sugar Factory. He is simply a member of the Sugar factory but he does not participate in the management of the factory. Sopan Darandale never worked for him in the sugar factory elections or in other elections. He has not worked as a Publicity Officer during elections.

270. Surprisingly enough, in the meeting dated 11-5-1991 at Rest House, Ahmednagar, Girish Kulkarni interviewed respondent No. 1, the facts about which have been discussed in foregoing paragraphs, Sopan Darandale is said to be present. This admission goes a long way to show that the respondent No. 1 knows Sopan Darandale thoroughly and rather allows him to be present at such personal meetings or press interviews. If, therefore, the respondent No. 1 says that Sopan Darandale was present, it can well be inferred that Darandale is the close to respondent No. 1. Sopan Darandale also attended the District Congress Committee meeting addressed by respondent No. 1 on 2-5-1991. At that time, Sudhir Mehta, Ramdas Dhamale were present. Sudhir Mehta is also shown to be present in the interview on 10-5-1991. In para 50 of the evidence, there is also reference to Sopan Darandale at the meeting of Newasa on 3-5-1991. The photographs Exhs. 131, 132, 234 are in relation to that meeting. Even Dadabhau Kalamkar was also present at that meeting. The respondent No. 1 admits that Sharad Pawar also delivered speech. Subhash Landge and one more person were felicitated on their entry in Congress in that meeting.

271. Respondent No. 1 has admitted in para 107 that in the issue of Nawa Maratha dated 8-2-1990 Exh. A-19, there is an election report in regard to respondent No. 1, which was given by Darandale from Sonai. Although respondent No. 1 denies that Sopan Darandale is the owner of Shanaishwar Advertisers, there is a clear admission of his witness Chandel that Darandale runs this concern. In Sarwamat Exh. A-43 dated 9-5-1989, there is a report published in connection with the election and the same was provided by Darandale and Bhimrao Patil—the Public Relation Officer of Dnyaneshwar Sugar Factory. This advertisement is published by Shanaishwar Publicity. The advertisement is shown to have been given by Cudakh Mitra Mandal. Similar advertisement is to be found in Kesari dated 9-5-89 (Exh. A-45); Sarwamat dated 12-5-1989 (Exh. A-49) in respect of felicitations offered to respondent No. 1 for his achievements in the constituency.

272. Respondent No. 1 has admitted that the wording has been supplied by Darandale and Bhimrao Patil and the publications have been made by Shanaishwar Advertisers. Similarly in Lokmat dated 12-5-1989 (Exh. A-46) the wording is supplied by Darandale. This was on the occasion of 50th birthday of respondent No. 1. So is the case with A-47 and

A-48 respectively Sarwamat dated 12-5-1989 and Sarwamat dated 12-5-1986, which relate to the birthday greetings to respondent No. 1. Respondent No. 1 has lastly admitted that these publications are given by Shanaishwar Advertisers on the occasions of his each birthday. This would, therefore, clearly show that respondent No. 1 and Sopan Darandale are closely acquainted to each other, and that when respondent No. 1 tries to disown the acquaintance with Darandale, he discredits himself.

273. In para 118, respondent No. 1 admits that advertisements Exhs. A-50 and A-1 in Lokyug and Kesari papers dated 27-4-1989 are in regard to the elections to the Board of Directors of Mula Sugar Factory. These advertisements are given by Shanaishwar Advertisers. Respondent was contesting as a candidate of Sahakari Panel whereas Maruti Dada Patil was contesting as a candidate of Maruti Panel. Exhs. A-53 to A-57 advertisements in Gaonkari, Sarwamat and Kesari papers are also published by Shanaishwar Advertisers. Although respondent No. 1 has deposed that he was not looking after the work of advertisements but has admitted that the bills paid to various advertisers were put up before the Board of Directors, of which he was either the Chairman or the Director. Exhs. A-52 to A-58, A-59, A-60, A-61 and A-66 contained the names of supporters of respondent No. 1 and these advertisements are edited by Sopan Darandale. Article A-69 Sarwamat dated 12-5-1985 given by Balasaheb Tampure also is edited by Darandale, Sarwamat dated 15-6-1990 Exh. A-70 of Machandra Patil is also published through Shanaishwar Advertisers. There are the additional documents which would establish nexus between the respondent No. 1 and Darandale.

274. Zunzar Neta paper of Beed dated 14-5-1991 refers to the news item about payment of Rs. 20 lakhs by the petitioner to Janata Dal candidate. It is stated that Kolse Patil shifted from Nagar to Beed on payment of Rs. 20 Lakhs by the petitioner. This is on the information based on the allegations made by respondent No. 1 at various places in South Nagar constituency. The other paper is at Exh. B-32 which is Beed Sanchar. Respondent No. 1 was referred to B-32 Beed Sanchar dated 6-5-91 and he admits that he had read as his workers had supplied it to him but according to him, this is not based on his speech at Sonai on 30-4-1991. It is pertinent to observe that inspite of such serious information alleged to have been given by respondent No. 1, respondent No. 1 did not write to the Editor of either Beed Sanchar or Zunzar Neta but preferred to observe silence giving an impression that the facts appearing in the news items might be true.

275. The learned advocate for the petitioner has gone to the extent of observing that the respondent No. 1 has disowned his own article given in respect of Chandrabhan Athare Patil at Exh. A-9 in the year 1991. Initially Athare Patil was given ticket for Parliamentary election but the same was withdrawn within 2 hours on 29-11-1984 and the same was given to respondent No. 1. In Exh. A-7 Sarwamat dated 17-12-1984 and in A-9 Deepstambh, articles written by respondent No. 1, respondent No. 1 has praised Athare Patil and solicited blessings from him. The same is at Exh. A-48 but curiously enough, respondent No. 1 does not know that such an article was given by him. I feel that since the situation was embarrassing and since Athare Patil was not given ticket but the same was given to the respondent No. 1, respondent No. 1 has taken this stand and thereby it can be held that respondent No. 1 can change his stance from time to time as and how a suits him.

276. Another illustration is also pointed out and that is in regard to Nav Bharat Abhiyan of which respondent No. 1 was the Vice President. Since this Abhiyan was critical of Sharad Pawar. As per the news items in paper A-14, A-15 and A-16 (Samachar dated 9-8-1989, Samachar dated 12-8-1989 and Samachar dated 20-8-1989), these activities of the Abhiyan are given. Respondent denies about the same but when being faced with Kesari paper dated 9-8-1989 at Exh. A-13, respondent is compelled to admit that he was the Vice President of Nav Bharat Abhiyan. This illustration again highlights the conduct of the respondent No. 1. He was embarrassed at this time because Sharad Pawar was backing him but in the earlier situation, he had criticised Sharad

Pawar and it can be legitimately said that the respondent No. 1 has been loyal to only that group or principle which benefited him.

277. In newspaper issues of Nawa Maratha, Sarwamat, Gaonkari, Samchar, Lokmat, Nagar Times & Exhs. A-19 to A-24, it is shown that respondent No. 1 had opposed the issue of ticket to Dada Patil Shelke because he had contested from that constituency four times. Respondent No. 1 manipulated the resignations by the Members of Zilla Parishad, Panchayat Samittee, Market Committee and got them in his possession so as to convey the protest to the High Command at Delhi. The said attempt appeared in the newspaper. Even on the admission of the respondent No. 1 in para 107, he has not been able to deny that the resignations were given to him for being forwarded to the concerned as and when necessary. Respondent No. 1 despite this important event, has tried to feign ignorance about this news in relation to Assembly election.

278. The learned advocate for the petitioner has also contended that even at times, respondent No. 1 worked for the rebel candidate even against the Congress official candidate and that is to be found in Exhs. A-29 to A-32 and A-32 to A-35 wherein Madhukar Mule—the Janata Dal candidate—is shown to be contesting against the official candidate Dada Patil Shelke. The Directors of Mula Sugar Factory were backing Madhukar Mule who was not given Congress ticket and who, therefore, chose to contest from Janata Dal ticket. Machindra Temak had openly supported Mule as per Nagar Times B-34 dated 31-1-1990. In that advertisement, it was shown that Madhukar Mule was to file nomination on 3-2-1990 and that the people should remain present. The same publication is signed by Sahebrao Gadakh, Pandurang More, Phatke, Machindra Temak, who are undisputedly the Directors of Mula Sugar Factory. This would, therefore, clearly show that the respondent No. 1 and his supporters wanted Madhukar Mule to be elected against the official candidate Patil.

279. Respondent No. 1 has indeed tried to deny the suggestion and has deposed that he technically remained with the Congress candidate but impliedly directed his workers to work for rebel candidate Mule. No action was taken against the Congress workers who worked for Mule. In para 111, he admits that he is the founder Chairman of Mula Sugar Factory. This would again reaffirm the submissions by the learned advocate for petitioner that the respondent No. 1 could work for the rebel candidate against the official party candidate. Impliedly, therefore, this is an illustration about the disloyalty of respondent No. 1 to his Congress party.

280. In another attempt it is sought to be urged that the workers of respondent No. 1 tried to assault Dada Patil and Dada Patil had to take shelter in the field during the night and this is seen in paper A-29 Kesari dated 2-5-1989; A-30 Kesari dated 5-5-1989; A-31 Kesari dated 8-5-1989; A-32 Sarwamat dated 4-5-1989. In those reports, it is clearly mentioned that the workers of respondent No. 1 tried to assault Dada Patil because Patil was contesting against the candidate of the group of respondent No. 1. In Lokyug A-33 dated 29-4-1989, in Gaonkari A-34 dated 29-4-1989 and in Sarwamat A-35 dated 20-4-1989, there has been a news that Maruti Panel i.e. the opposing panel of respondent No. 1 had received Rs. 25 Lakhs for the election. In Kesari A-30 respondent No. 1 even offered Rs. 10,000 to the worker who would apprehend any canvasser of Maruti Panel, if found distributing money in the area. He, of course, denied that the sitting M.L.A. would not be in power in next few months. He knew the names of five factories who had supplied Rs. 25 Lakhs to the opponent panel but he refused to divulge their names. Respondent No. 1, therefore, wanted to malign Maruti Panel even though he had no material about Rs. 25 Lakhs.

281. The learned advocate for the petitioner has emphatically contended that this is one of the modes by which respondent No. 1 would attack the opponent without proving the corrupt practices. Respondent No. 1 also advised snatching the purse in case persons tried to distribute money. These

are the strategies which are employed by the respondent No. 1 to bring down the opponent in the estimation of public. I feel that this suggestion also deserves to be upheld and it will have to be observed that the respondent No. 1 has indeed not been fair in the matters of election.

282. Consistent with the above arguments one more illustration has been cited by the learned advocate for the petitioner and that is to be found in paragraphs 101, 121 and 122 of the evidence of respondent No. 1 at Exh. 328. Respondent No. 1 alleged that in the elections to the Board of Directors of Mula Sugar Factory in 1981, one Kisan Shinde of Panaswadi was murdered. It was also canvassed that his opponent Tukaram Gadakh was responsible for this murder. Tukaram Gadakh was also contesting against respondent No. 1. He belonged to Maruti Shetkari Panel. Respondent No. 1 denied to have taken procession in regard to Shinde to the Collector office vide photograph Exh. 243 Sarwamat dated 16-3-1989. He also denied of having picketed at the hands of the Collector as per Sarwamat Exh. 242 dated 9-6-1989 and Kesari Exh. A-71 of the same date. But he admits that he had taken out delegation to the office of the Superintendent of Police and sat in front of the office. This was indeed a Dharana but respondent No. 1 has the audacity to say that sitting was not Dharana.

283. Ramnath Wagh and Abasaheb Nimbalkar were with him. It may be stated that Ramnath Wagh became his election agent for the Parliamentary election in 1991. It would be also seen that Sudhir Mehta is also sitting with respondent No. 1 vide Exh. 71 and so also Bhayyasaheb Deshmukh. It has been rightly suggested that this is one more circumstance to establish that Sudhir Mehta and Bhayyasaheb Deshmukh are on intimate terms with respondent No. 1. This delegation was taken out in order to secure arrest of all the accused including Tukaram Gadakh. It was also denied by Maruti Kale in presence of all these people that a larger procession would be taken out for going to the office of the Collector on 12-6-1989. Dadabhai Kalamkar was one of the leaders in this decision. This is to be found in leaflet Exh. 249 Sharad Pawar was the Chief Minister at that time and it has been stated that Sharad Pawar announced the help of Rs. 10,000/- to the family of murdered Shinde.

284. The next suggestion which has been pressed by the learned advocate for petitioner is that respondent No. 1 had gone to the extent of holding a mock Court to train the witnesses before they were examined before the Sessions Court in the trial of murder of Shinde and this was because they anyhow wanted Tukaram Gadakh to be convicted and to lose the election. This contention is not without any foundation. The Panch Harishchandra Zagade, who was examined before the Sessions Court, deposed that respondent No. 1 had carried out the rehearsal of witnesses at the premises of Mula Sugar Factory before the witnesses were examined. Such publications are to be found at Exh. A-72 Lokmat and A-73 Kesari both dated 18-5-90. It would be evident that these were very serious allegations levelled against the respondent No. 1. It was highly unfair and rather cruel to hold such mock Court in order to see that the witnesses are trained to depose against an innocent accused. If the witnesses maintained the tempo and deposed in conformity with the training in face of false story, that would be the height of mockery of justice.

285. Although the allegations have appeared in the papers A-72 and A-73 about the mock Trial, it is surprising to see that respondent No. 1 did not deny those allegations openly although that could impair his public image. The unexplained silence on the part of respondent No. 1 is a pointer to fact that what was said by Harishchandra Zagade may not be false. Tukaram Gadakh was indeed acquitted in that case. Tukaram Gadakh defeated the official Congress candidate and came to be elected as an independent candidate. It is stated by the respondent No. 1 and is a widely known fact that Sharad Pawar formed the Government with the help of 11 independent candidates including Tukaram Gadakh. That is how the tables changed.

286. There are the suggestions which would reaffirm the sordid impression that the political loyalties are like fluid surfaces. They shift with only one principle and that is retaining power anyhow.

287. The other astounding fact is the want of knowledge of Election Law on the part of respondent No. 1. At the outset, it must be observed that it is the election law which paves way for the Members of Parliament to enter the House of Parliament. The Members of Parliament must know what are the prohibitions laid down under the R. P. Act; what is permissible; what is a fair practice; what is the nature of secret elections; what is meant by corrupt practices and what are the serious consequences that flow on account of committing corrupt practices. But so far as the respondent No. 1 is concerned, he has the audacity to say what is corrupt practice. In para 183 of his evidence, respondent No. 1 has exhibited extremely poor knowledge about the election law. He has stated that he can not say whether payment to any political party for securing its backing is an offence under the Election Law. He also can not say that levelling charges against a candidate that he wants to secure votes by distribution of money or articles or making payments for repairs of Chawadies temples is an offence. He is also unable to say as to whether the allegation about petitioner paid Rs. 50 lakhs to Janata Dal would amount to corrupt practice. So also the allegation that money dealings are not made openly or in photo session or on any stamped receipts. He is unable to say whether Rs. 5,000/- sent by petitioner for construction of Chawadi at Ganganagar would be a corrupt practice. He has also shown ignorance about the corrupt practice of distribution of cycles to win over the voters and the participants. These specific questions have been put to him and respondent No. 1 has stated that he can not say the meaning of the provisions relating to corrupt practices and this would, therefore, reaffirm the argument that the respondent No. 1 indeed indulged in allegations which he could not distinguish as damaging the political character and the personal character and conduct of the petitioner.

288. Respondent No. 1 has all along deposed that he has not been reading the newspapers during the election period as he had no time. But this is belied by several admissions made by him that he has set up a systematic organisation to acquaint him time to time developments in the electorate. This would certainly include the news media working in the constituency. He has admitted that several newspapers were available at Mula Sugar Factory. He also admitted that the congress workers read those newspapers. He himself purchased some of the local newspapers and other prominent newspapers having circulation throughout the State of Maharashtra. He admits that in case of incorrect reporting of the speeches, through paper, his image would be adversely affected. However, he never wrote to any newspapers about the incorrect reporting.

289. He admits in para 209 of his evidence about the organisation of workers with whom he used to discuss about the developments. He did not instruct the Personal Assistants about preserving the cuttings of the newspapers but stated that some important cuttings of newspapers are preserved by his Personal Assistants in his office. They used to acquire material as per his directions. He admits that vide Exh. 52 Lakmat, portion marked A to A (dated 18-5-1991), he has stated that he had correspondence with the electorate about important questions, and that he had engaged one retired Deputy Collector to assist him in that work. That officer who acts as Liaison with the electorate is of the rank of retired Deputy Collector. Which such a trained communication machinery, it is not homeable that respondent No. 1 would not acquaint himself about the news items in regard to various meetings, more particularly Sonai meeting dated 30-4-1991, District Congress Committee meeting dated 2-5-1991, Newasa Bazar Tal meeting dated 3-5-1991 and Shrigonda meeting dated 11-5-1991. I feel that respondent No. 1 does not tell the truth in this behalf. On the other hand, a definite impression is gathered that he was knowing the news appearing in various papers from time to time. He never contradicted the correctness of those news by writing to the Editors. That is precisely because the news items were not false.

290. Another objectionable conduct which has been exhibited by respondent No. 1 was to distribute educational grants

to various educational institutions during the election period. In this behalf, in para 128 of his evidence, the respondent No. 1 admitted that the date for nomination was 19-4-1991; that he filed nomination on 22-4-1991; he admits that the educational fund was distributed as per programme Exh. A-82 Sarvamat dated 18-4-1991. He attended this distribution ceremony at Surgaon and at one or two other villages. He admits his own presence in the photograph Exh. A-83. According to him, each sugar factory has educational funds collected from the farmers and the same is distributed to the schools run in that area. Photograph A-84 also depicts the presence of Bhayyasaheb Deshmukh. In Gaonkari newspaper A-85 dated 16-4-1989, he spoke about B.J.P. and other Governments at the distribution function of the educational grants. This was absolutely unwarranted. He could not convert that platform into political platform when the function is only about distribution of educational funds. This distribution went on from 15-4-1991 to 26-4-1991.

291. The photographs Exhs. A-88, A-89 and A-93 show respondent No. 1 in the company of Marutirao Ghule and Bhayyasaheb Deshmukh. There was also unveiling of the portrait of Marutirao Ghule. In photograph Exh. A-89 and A-90, respondent is seen with Marutirao Ghule Patil and Bhayyasaheb Deshmukh, A-93 of the year 1976. Bhayyasaheb Deshmukh is seen with respondent No. 1 in photograph A-94 when this party visited Taj Mahal at Agra. In photographs A-95 to A-104, respondent is seen either with Dada Kalamkar or Shivajirao Nagode or Marutirao Ghule. In photographs Exhs. A-105 and A-106, respondent is seen with Sadubhau Joshi and other congress workers. This would, therefore, clearly show that respondent No. 1 is on intimate terms with Marutirao Ghule Patil, Bhayyasaheb Deshmukh, Dada Kalamkar and Sadubhau Joshi. They are thus interested in each other.

292. Another attempt has been made to show that respondent No. 1 had nominated his relatives in other institutions. His son-in-law Shankarrao Gadakh is the Chairman of Sonai Co-operative Society. His wife Shardubai is the Director of Sharda Mahila Nagari Patsansha for which there are documents B-40 and B-41. Respondent No. 1 admits that the Directors of the sugar factory are the trustees of educational trusts created by those sugar factories. It is also necessary to observe that even after the election, respondent No. 1 in thanks giving advertisement at Exh. 63 Kesari dated 18-6-1991 again taunted the petitioner that wealth can not win the election.

293. Respondent No. 1 in para 139 denied that he misrepresented the facts about the building of medical college and has also denied about news B-30 Gaonkari dated 20-5-1991 about the false information given in regard to his proposed medical college.

294. My attention is also drawn to various photographs which were taken at the felicitation function of the journalists at the hands of the respondent No. 1. Respondent No. 1 tried to show this function as the function held for distribution of awards instituted by the Government for journalists. However, he has not been able to name that award. On the other hand, vide various photographs Exhs. A-109, A-118, B-2, B-3 and B-4, various journalists Blushan Deshmukh, Sudhir Mehta, Apnto, Madhukar Khadke, Nandkumar Salpute of various papers have been felicitated by respondent No. 1.

295. The learned advocate for the petitioner has contended that respondent No. 1 used to keep pleased the journalists obviously with a view to see that they report in his favour. Another peculiar circumstance is that respondent No. 1 states that Gadakh Mitra Mandal is not under his control. They used to issue publications at their own costs but when one looks to the voucher B-39, it is a bill of Rs. 5,000/- issued by Sandeep Screens in favour of the above Mitra Mandal but the same has been included by respondent No. 1 in his expenditure schedule submitted to the Election Commissioner. It can, therefore, well be said that Gadakh Mitra Mandal was nothing but the association run by the respondent No. 1 himself. Huge expenditure has been incurred on behalf of this Mitra Mandal. It can be said that these are the advertisements possibly given by respondent No. 1 himself.

296. From the foregoing discussion, it would manifest that respondent No. 1 has been undertaking several types of tactics to advance his cause. The objectionable mode of fighting elections has also been pointed out by the learned advocate for the petitioner. His acquaintance with Dharandale; his efforts to keep the journalists pleased are well borne out. His poor knowledge about the election law also persuades one to believe that respondent No. 1 was capable of indulging in making statements touching upon the personal character and conduct of his opponent without understanding the legal implications and if that be so, respondent No. 1 really does not inspire confidence. In this light, his statement that he did not make the objectionable statements at the above various meetings and also in the interview given to Girish Kulkarni can not be accepted as truthful.

NOTICE U/S 99 OF THE REPRESENTATION OF PEOPLE ACT.

297. The learned counsel for the noticee Pawar and the learned counsel for the respondent No. 1 have raised certain points which need to be considered. In the first instance, it is pointed out that under section 123(4) of the R. P. Act, it is necessary for the petitioner to plead that the statement which touches upon the personal character and conduct of the petitioner is in the first instance a statement of fact which is false and which he either believes to be false and it is not believed to be true. There is no pleading to that effect in the election petition and in A.I.R. 1971 S.C. 1943 in the case of Mangilal V/S Krishnaji and also in A.I.R. 1986 S.C. 717 in the case of Ramchand Bhatiya V/s. Hardayal, it is laid down by the Supreme Court that such an averment is absolutely necessary and the same is reaffirmed in A.I.R. 1990 S.C. 1731 in the case of Lalit Kishor Chaturvedi V/s. Jagjit Prasad. In this case, it is necessary for the petitioner to make an averment that the impugned statement is not only false but the same is a statement of fact which the candidate believes to be false or does not believe to be true. It is not disputed that the statement should be made by the returned candidate and that it is either believed to be false or not believed to be true by the returned candidate but all the same, the onus is on the petitioner.

289. Now, in this behalf it is contended that there is no such averment in the election petition. I believe that this argument is entirely incorrect. In the election petition, it is stated at more than one place that the impugned statements are false; that the maker of those statements believed that they were false. The cursory glance at the election petition would clearly show that in paragraphs Nos. 16 and 17, there are averments to that effect. In para 16, it is contended that the statement made by Pawar is same in para material with the statement made by first respondent, which have been reproduced at Exh. B-2 and B-4. Now this statement includes the statement O which is made by Sharad Pawar in the meeting at Shrigonda. The petitioner has averred that these false statements were made by Sharad Pawar with consent of first respondent. Both the first respondent and Sharad Pawar believed that these statements were false and were calculated to prejudice the election prospects of the petitioner.

299. In para No. 17 it is also clearly mentioned that the statements at Exhs. A to K which cover all the statements except the one made by Sharad Pawar at Shrigonda were false and both the first respondent and Sharad Pawar believed that those statements were false and were calculated to prejudice the election prospects of petitioner. Now when one looks to the rulings above, it is evident that there was no reference to any of the parts of section 123 (4) of the R. P. Act. There was neither averments that the statement which was impugned was false or that the maker of the statement did not believe it to be true or know it to be false and it is in that background that the Supreme Court was required to observe that those statements were not pleaded in terms of sec. 123(4) of the R. P. Act, and, therefore, proceeded to dismiss the election petition.

300. The learned counsel who argued the matter for the respondent No. 1 has urged that even if the pleadings are looked into, there is only one pleading throughout that respondent No. 1 knew that those statements were false and likewise Sharad Pawar. The law requires that both these

pleadings have to be made and they are that the statement is not only false but the maker of the statement knew the same to be false or did not believe it to be true. I am afraid that such is not the tenor of section 123(4) of the R. P. Act because in that provision, it is clearly mentioned that the candidate either believes it to be false or does not believe it to be true. The petitioner can plead either and that is that the maker of statement believed it to be false or in the alternative, the maker of the statement did not believe it to be true.

301. The learned advocate for the petitioner has rightly pointed out that pleading both these is not necessary. Pleading either is appropriate and he has urged that pleading both would confuse and prejudice the respondent because the onus cast would vary in case of each. In the foregoing paragraphs, it is indicated that either pleading is probable and tenable and that it is absolutely not necessary to plead both that is believed to be false or not believed to be true. The foregoing paragraphs in the election petition would clearly indicate that the petitioner has chosen to rely on the proposition that the maker of the statement believed it to be false and hence the argument in that behalf cannot be countenanced.

302. Now when one goes to the evidence it would be found that in the written statement respondent No. 1 has taken a specific stand that no statements touching upon the personal character and conduct of the petitioner were ever made. Of course, this could not absolve the petitioner from proving the requirements under section 123(4) of the R. P. Act but all the same, it can be gathered that the respondent No. 1 has totally disowned the impugned statements purported to be made by him at all the meetings and by Sharad Pawar at the meetings at Newasa and Shrigonda on 3-5-1991 and 11-5-1991 respectively.

303. In A.I.R. 1971 S.C. 1943 in the case of Mangilal V/s. Krishnaji and in A.I.R. 1966 S.C. 773 in the case of Dr. Jagjitsingh V/s. Giyyani Kartarsingh, it is observed that the bonafide statements made by respondent would be covered in the above phrase "believed to be true". In A.I.R. 1971 S.C. 1943 (supra), it would be found that there were statements by the returned candidate that the petitioner had misappropriated certain amount. But it was found that prosecution was lodged against the petitioner and the Court held that looking to the evidence, the candidate making the statement would be protected if it is found that the statement is made bonafide although it may not be true. That statement would not come under the mischief contemplated under section 123 (4) of the R.P. Act. In A.I.R. 1966 S.C. 773 in the case of Dr. Jagjitsingh (supra), the Court found that the statement was that amongst those who drink, the petitioner's rank was very high and that the petitioner had tamed his beard, which was contrary to Sikh religion. It may be stated that the respondent had evidence in that behalf and the evidence was found to be probable. It was, therefore, held to be the bonafide statement and is protected under section 123 (4) of the R.P. Act.

304. In this case, of course, the position is altogether different. All the witnesses examined on behalf of the respondent have clearly averred that at the meetings at Sonai and District Congress Committee, there was talk amongst the workers that the petitioner was to spend huge amount; that he had paid Rs.50 lakhs to Janatu Dal; that he had paid Rs. 20 lakhs to Kolse Patil; that he had quoted the rate of Rs. 50,000 to taluka level worker and Rs. 25,000 to village level worker for defecting from Congress; that he had decided to renovate temples and the Chawadies at respective places at his own cost; that he was to distribute cycles, dhoties, sarees etc. Sadhashiv Joshi at Exh 130 has deposed that such were the talks amongst the workers at the meeting at Bazar Tal on 3-5-1991. Sudhir Mehta at Exh. 152 has also deposed likewise at District Congress Committee meeting on 2-5-1991 and Newasa meeting on 3-5-1991. Chandel has likewise deposed for Sonai meeting on 30-4-1991 and Newasa meeting on 3-5-1991. Shirke talks about the meeting on 11-5-1991 at Shrigonda. Abdul Aziz Ambakar talks likewise about the Sonai meeting on 30-4-1991 and District Congress Committee meeting on 2-5-1991. Bhayyasaheb Deshmukh talks about the same thing

about Sonai meeting on 30-4-1991. Kalamakar talks in the same tone about the meeting on 2-5-1991 at Nagar and 3-5-1991 at Newasa Bazar Tal and the witness Rajendra Gaikwad at Shrigonda meeting on 11-5-1991. However, all these witnesses have not named any of the worker who was talking about the corrupt practices by the petitioner.

305. On the other hand, they were faced with the news reports appearing in several papers namely Gaonkari, Nagar Kesari, Samachar, Lokmat which published the offending statements made by respondent No. 1 and Sharad Pawar and all of them have categorically stated that none of the news reports were controverted or challenged either by them or by respondent No. 1. More particularly, the witness Chandel, who is himself a reporter and whose articles are published, do not care to pursue the matter and challenge the editor that those news were false. It will have, therefore, to be held that in face of this evidence, it would be difficult for respondent No. 1 to show that he made bona-fide statements. In the written statement, as indicated, there was no averment that the statements were bona fide and that they believed them to be true.

306. The learned advocate for the petitioner has contended that these are the circumstances which clearly establish that the makers of statements knew that the offending statements were false. I do uphold this argument in view of the fact that the witnesses, some of whom were reporters, did not complain in writing to the editors for incorrect news reporting. Joshi claims to have talked to the District Congress Committee President but that was simply oral and, therefore, can not retrieve respondent No. 1 from the fact that the impugned statements were not false. The witnesses for the petitioner and the petitioner himself have categorically stated that all these statements were false.

307. It will have, therefore, to be held that respondent No. 1 and Sharad Pawar very well knew that they were making false statements. None of the witnesses on behalf of respondent has been able to point out that Rs. 3 crores have been spent for the election by the petitioner; that petitioner paid Rs. 50 lakhs to Janata Dal for securing its support; that Rs. 20 lakhs were paid to Kolse Patil to withdraw from Nagar and to contest from Beed and that a rate was quoted by the petitioner at Rs. 25,000 for village level workers and Rs. 50,000 for taluka level workers to defect from Congress; that petitioner was to spend for repairs of Chawadies and temples and that the petitioner had sent Rs. 5,000 for repairs of Chawadi at Ganganagar in Newasa taluka and further the petitioner was to distribute Sarees, dhoties etc.

308. The learned counsel for the respondent No. 1 has contended that Mrinal Gore, the leader of Janata Dal, had made a statement on 28-4-1991 at Exh. 23 wherein she had clearly stated that there was no question of Janata Dal ticket being offered to the petitioner Vikhe Patil and still on the next day, according to respondent No. 1, the support was extended to petitioner by Janata Dal as Kolse Patil withdrew from Ahmednagar constituency. Rumour was, therefore, ripe in the constituency that petitioner paid a huge amount to Janata Dal for securing its support and that he paid sizeable sum to Kolse Patil for withdrawing from Nagar and for contesting from Beed.

309. Relying on the judgment of Karemore (supra), it is urged that if there is rumour that a candidate has withdrawn and that the returned candidate paid the amount to the candidate withdrawing, then such a statement is protected as arising out of bona fide belief. However, in the first instance when one looks at Exh. 23, the statement by Mrinal Gore is very unequivocal and it relates to the issue of party ticket to Balasaheb Vikhe Patil. It is undisputed that the petitioner contested as an independent candidate and not as a sponsored candidate of Janata Dal. It has not been disputed even by respondent that in the Beed contested as arising out of bona fide belief. However, in the previous election. It is, therefore contended by the learned counsel for the petitioner that Kolse Patil contested from

Beed because Janata Dal had hold in that constituency whereas in Nagar 39 constituency, Janata Dal candidate was never returned. In this background, it can not be said that the petitioner would pay huge amount to Janata Dal and Rs. 20 lakhs to Kolse Patil. I feel that the inferences drawn on this situation are reckless, unwarranted and inapprehensible. A huge sum is lightly quoted.

310. Rushing to the conclusion that Rs. 50 lakhs were paid to Janata Dal; that Rs. 20 lakhs were paid to Janata Dal candidate would be simply hazardous and unwarranted. It is unathomatic that the huge amount would be paid to the party. The statement of Mrinal Gore on behalf of Janata Dal was not such as to warrant the inference drawn by respondent No. 1 and his workers. I am, therefore, of the view that the statements have to be read not in isolation but in relation to this news report Exh. 23. On no reckoning, it can be said that Janata Dal offered support to Vikhe Patil on receipt of huge consideration. Equally it is not possible to accept that Justice Kolse Patil would receive amount of Rs. 20 lakhs and contest from Beed after withdrawing from Nagar. I, therefore, feel that the statements made by respondent No.1 or Sharad Pawar in this behalf, by on stretch of imagination, could be called to be bona fide and could be protected under section 123(4) of the R. P. Act. It will have to be borne in mind that besides these statements, other statements were also made by respondent No. 1, therefore, feel that the ratio available in Karemore's case (supra) would not be available to respondent No. 1 and Sharad Pawar.

311. In view of this, it will have to be found that the impugned statements made by Sharad Pawar and respondent No. 1 were not only false but they knew that they were false. It is only to enhance the election prospects of the respondent No. 1 that such canvassing was done. Added to this, one important position that has to be underscored is that both the speakers treated the petitioner as an outsider who wanted to invade the draught prone constituency where only the poor population stayed. Again if further parts of the speeches are considered, they clearly show that the petitioner was determined to capture the constituency on the strength of wealth and not on the strength of social welfare, morality, programme or other consideration. Such approach on the part of the respondent No. 1 and Sharad Pawar was indeed meant to assassinate the personal character and conduct of the petitioner.

312. The next question which has been posed by the learned counsel for the notice and the learned counsel for the respondent No. 1 is that there is neither pleading of consent nor proof thereof. Now in the foregoing paragraphs, it has been pointed out that consent has been pleaded by the petitioner in his election petition. The learned counsel for the notice has relied on A.I.R. 1969 S.C. 1201 in the case of S. N. Balakrishna v/s. George Fernandes wherein the Court held that consent has to be specifically pleaded. In absence thereof, the petition must fail. As indicated in the foregoing paragraphs, it has been pointed out that the petitioner has specifically pleaded that the respondent No. 1 had consented to Sharad Pawar to make the impugned statements. The important circumstance which needs to be emphasised is that in spite of the reports appearing in the newspapers publishing the impugned statements touching upon the personal character and conduct of the petitioner, there was no utterances challenging the correctness of the statements on the part of respondent No. 1 or even for that purpose, by the Chief Minister.

313. At this stage, it is necessary to observe that Mehta, Joshi, Chandel, Kalamakar Ambekar have been reading the newspapers during the election period. They were the active workers of congress. They had occasions to meet respondent No. 1. but they never pursued the matter either with respondent No. 1 or the editors of the newspapers complaining that the news reports were grossly incorrect and that they were far from being true. The respondent No. 1 has also not specifically pleaded in the written statement that he was not aware of these reports. Except in regard to the meeting at Newasa, he has nowhere contended that he had not read the newspapers.

314. Apart from that, the witnesses for the respondent, although were acquainted with the news reports, did not care to inform either respondent No. 1 or the editors of the papers to publish the correct news. The respondent No. 1 cannot escape by saying that he read the newspapers only after the election petition. In the foregoing paragraphs, it has been clearly pointed out that respondent No. 1 had set up an effective machinery of Personal Assistants to carry out the election prop-ganda. Respondent No. 1 was receiving newspapers at his sugar factory. He himself was purchasing the papers and if in that light, he states that he had not read the newspapers, this statement has to be taken as a brazen lie. It will have to be presumed that the respondent No. 1 did read the newspapers but did not contest the news and thus indirectly admitted the correctness of the news, which contained the impugned statements touching upon the personal character and conduct of the petitioner.

315. Now so far as the interview with Girish Kulkarni is concerned, writing letter Exh. Q and postal acknowledgement Exh. Q-1 would not be enough to repel the correctness of the interview. It is stated here before that respondent No. 1 did not pursue with the editor of Maharashtra Times for publication of the correct news or for revocation of the entire article published by Girish Kulkarni. His letter had clearly indicated and rather called upon the editor to correct the news item. Except writing this letter, nothing else was done and I have observed that that letter would not be enough to show that the respondent No. 1 had complained about the correctness of the news report and that editor received that letter. This is nothing but white wash the wrong committed by the respondent No. 1. The respondent No. 1 was presumed to know that serious consequences are likely to follow. However, I have indicated that respondent No. 1 had scant regard for the election law. He did not know the provisions of the election law and that is why he must have felt that the offending statements would not amount to corrupt practice under section 123(4) of the R. P. Act.

316. The case law regarding consent has well been elaborated herebefore. I, therefore, feel that even the question of consent, its pleading in the petition, its proof need no longer elaboration. The petitioner has proved the consent and, therefore, the argument has to be negatived.

317. Now coming to the notice under section 99 of the R. P. Act, the learned advocate for the notice Shri Pawar has contended that the notice was issued on 18th September, 1992. The evidence of respondent No. 1 was over on 4-9-1992. The evidence of respondent was made part of the Court record somewhere in the beginning of October, 1992 and hence the notice is based on improper application of mind or the Court. It remains a fact that the notice under section 99 has been issued only after completion of evidence. The evidence of respondent No. 1 at Exh. 328 was made a part of record of this Court somewhere in beginning of October, 1992. But it can not be said that the evidence was not available for consideration. The notice was indeed issued after completion of the evidence as required under section 99 of the R. P. Act.

318. The next point which has been posed by the learned counsel for the notice is that if one looks at the notice, it refers only to the conduct and character of the petitioner and not the personal character and conduct of the petitioner. Likewise, it is also pointed out that in the notice, which commences from page No. 12 of the order, there is no reference to the witnesses on the basis of whose evidence the notice was issued. There is only reference to the reports by the newspapers. There is reference to reporters. It would be also evident from the notice that Sharad Pawar is said to have made the statements on the basis of the speech delivered by respondent No. 1 on the earlier day i.e. more particularly, with reference to Shrigonda meeting on 11-5-1991. Reliance is heavily placed on the observations of the Supreme Court in 1991 (2) S.C.C. 342 in the case of Manohar Joshi v/s. Damedhar. In that ruling, it was clearly observed that a notice under section 99 can not be a vague notice such as one issued by this Court in the writ petitions at Bombay. The Court laid down that the Court has not only to name the person but also the nature of corrupt practice committed by him. If the person is to the petition, it is not necessary to hear him separately before recording

such finding. However, when he is not a party to the petition, he must have the same opportunity as the party to the petition to meet the allegations made against him. In that respect, he stands on the same footing of the party to the petition against whom such a finding is recorded. He can not be discriminated against and made to suffer any disadvantage because he is not a party to the petition. This is the precise object which is sought to be secured by the above provision. This is because the consequences are serious and there is every likelihood of the notice being disqualified from contesting the election for a period of six years. The notice is entitled to know exactly the charge he has to meet and for that purpose, he is entitled to the notice about the portions of the petition, written statement or the oral evidence, cassettes etc. in order to gather the precise charge or the charges made against him.

319. The ratio of this decision is clearly that the notice is entitled to know the precise charge he has to meet under section 99 of the R. P. Act. It will have to be stated that there is no prescribed form of the notice under section 99. All that is required is that the notice must be fully acquainted with the precise charge and the nature of evidence against him. Now if this notice dated 18th September 1992 is seen, it contains the order as well as the notice. The entire order and the notice has been served on the notice and it can not lie in the mouth of the notice that the recitals in the notice commencing from page No. 12 are the recitals to which he is required to meet. On the other hand, in the order which precedes the notice and which forms the internal part of this notice and which has been served on the notice clearly shows that respondent No. 1 and Sharad Pawar carried out the campaign against the petitioner. They uttered some statements which amounted to character assassination of the petitioner. It has also to be made clear that the names of the witnesses who have been referred in the order as well as the notice, have only been relied upon and it would not be, therefore, possible to countenance an argument on behalf of the learned counsel for the petitioner that the notice is defective.

320. On the other hand, the learned counsel for the petitioner has gone through the entire notice and the order and he has urged that nothing better could be incorporated in the notice so as to acquaint fully the noticee about the statements which are offending. It is also contended that Sharad Pawar has carried out the election campaign at the meetings at Sonai and Shrigonda and the basis that was availed of was the speech by respondent No. 1, which imputed several corrupt practices on the part of the petitioner. The argument, therefore, that the notice is defective does not survive even for a moment. The notice has extensively laid down the belief if the Court in regard to the statements relating to personal character and conduct of the petitioner. Again it is clearly stated in the notice that the notice is in respect of the corrupt practices under sec. 123(4) of the R. P. Act and this would, therefore, clearly amount to the notice about the personal character and conduct of the petitioner. Merely because the word "personal" has not been used in the order as well as the notice, the notice cannot be deemed to be ineffective. All that has to be guarded against is that the noticee is supplied with enough material to know about the precise charge and precise evidence.

321. It cannot be lost sight of that the noticee has been served with the relevant documents, the relevant audio as well as video cassettes. He has also been supplied with the depositions of the witnesses who have deposed against him, as required under section 99 of the R.P. Act. The evidence of respondent No. 1 is all along in support of the averments of respondent No. 1 in his written statement. The learned counsel for the notice has not been able to point out that on account of non-consideration of the evidence of respondent No. 1, prejudice is caused to the notice. Apart from that under section 99, it is clearly laid down that before the final order is made, the notice is given to a person against whom corrupt practice has been established. He should be given an opportunity to cross-examine the witnesses. The noticee has not chosen to cross-examine any of the witnesses. He has decided to stand by the assessment of the evidence of the witnesses for the petitioner and the witnesses for respondent No. 1. In that light of the matter, I am of the view

that the objections raised by the learned counsel for the notice do not survive and have to be rejected.

322. It is urged that the allegations are in the nature of inferences and not statements of facts. I feel that this argument has to be mentioned only to be rejected. Under section 3 of the Evidence Act, the facts would include the mental condition of the person. It is also contended that there are statements showing that the petitioner had sent Rs. 5,000 for improvement of Chawadi at Ganganagar; that he had paid Rs. 50 lakhs to Janata Dal; that his budget for election was Rs. 3 crores; that he had quoted the rate of Rs. 50,000 for taluka level workers and Rs. 25,000 for village level workers for defecting from Congress; he was also to distribute dhories etc. Now these are, by no means, the statements of inferences. They are the statements of facts covered under the provisions of the Evidence Act.

323. It may be pointed out that the Supreme Court in some judgments observed that to call a person as Bharrashtachari, Vishwasghataki or Deshdrohi are the opinion of the speaker and not the statements of facts. Those statements were made on the basis of some commitments made by the candidate. Here nothing of the sort is available for consideration. The statements are positive. They are not only positive but reckless and false. Fictitious figures are earmarked. Taking those figures, even as probable, the budget would run in many crores and not 3 crores. The suggestion of figure of Rs. 3 crores is also fantastic because that exceeds the permissible expenditure for a candidate to contest the Parliamentary election. Without going to these details, it can well be concluded that these are the statements of facts and by no means, the statements of opinions based on inferences.

324. The other contentions raised by the learned counsel for the notice about the defective verification; supply of copy, doctrine of precedents, have been adequately replied to at appropriate places heretofore.

325. The next question which has been posed by the learned counsel for the notice as well as the learned counsel for the respondent No. 1 is that the statements must show that they are reasonably calculated to prejudice the prospects of the candidate in election. In this behalf, in A.I.R. 1986 S.C. 717 in the case of Ramchand V/s. Hardayal, it is observed that the electorate, at the time of election, has to be kept in view in judging whether the publication of a statement, would affect the voters. The Court has to ascertain whether the statement is really calculated to prejudice the prospects of the candidate in the election. It would be unrealistic to ignore that when appeals are made by the candidate, there is an element of partisan feeling and there is extravagance of expressions for attacking one another and the Court has to consider the effect of the impugned documents on the minds of the ordinary voters who read the posters.

326. The learned advocate for the respondent No. 1 has also relied upon A.I.R. 1964 Bombay 244 in the case of D. N. Patil V/s. D. K. Khanwilkar. It is urged that in this case, the elections were postponed by about three weeks i.e. from 23rd May to 12th June. This Court observed in Patil's case (supra) that if the time is enough to wipe out the impact of the speeches, then it cannot be said that the speeches reasonably calculated to prejudice the election prospects of the candidate. Now in the first instance here, we find that the allegations are repeated not only once but about four times. Even the interview was published in Maharashtra Times which

again related to the estimation of the petitioner in the eyes of the public. With such repeated poundings on the minds of the voters, it is difficult to assume that the impression would be wiped out within a time of 3 to 4 weeks.

327. In the case of Patil (supra), the period was clearly of two months. There were also statements by the petitioner that elections went on well, indicating that the voters were not affected by the speeches. Here it is pointed out that the petitioner in his thanks giving report, did not complain that the voters were misled on account of the election propaganda. It will have to be pointed out that the petitioner has raised voice more than once before the Election Commissioner that the corrupt practices were committed by the respondent No. 1. Exh. P-85 dated 10-5-1991 refers to the impugned statements made by respondent No. 1 and the Chief Minister and their publication in various papers namely Sakal, Kesari, Gaonkari, Samachar, Lokmat, Maharashtra Times and this would, therefore, clearly show that the petitioner never surrendered his complaint about incrimination of his character at the hands of the respondent No. 1 and Sharad Pawar.

328. The ratio laid down in D. M. Patil's case (supra) would not be available to respondent to show that the impugned statements were not calculated to prejudice the election prospects of the petitioner. On the other hand, in the foregoing paragraphs, I have indicated that the allegations have been reckless, false and were rather wild. They are bound to have adverse influence on the voters. The Court has to construe as per the view in Patil's case as to what is the impact of the offending statements. Without any longer elaboration, it will have to be stated that the impugned statements seriously assail upon the private character and conduct of the petitioner. I, therefore, feel that these statements were reasonably calculated to adversely affect the election prospects of the petitioner. All the objections raised on behalf of respondent No. 1, the notice and the respondent No. 6 have thus been considered and are rejected.

329. At the conclusion, I cannot but observe that imputations by respondent No. 1 and Sharad Pawar have been widespread through papers, cassettes (audio and video) media. It is practically impossible to hold that such slanderous imputations were not made. Any prudent person is bound to believe them to be made at the respective occasions detailed above. In 1984 (2) S.S.C. 281 in the case of Chhedi Ram V/s. Jhilmit Ram, the Supreme Court observed as follows :—

“Under the Indian Evidence Act, a fact is said to be proved when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of a particular case to act upon the supposition that it exists.”

Countering this proposition, there is no satisfactory evidence from respondent No. 1 that these publications are false. Respondent No. 1 had at his command, the complete machinery to controvert these imputations.

330. For the reasons stated above, respondent No. 1 and notice Sharad Pawar shall have to be held guilty of corrupt practices under section 123(4) of the R. P. Act. Notice under section 99 of the R.P. Act against Sharad Pawar has to be made absolute.

PRAYER U/S 101(b) OF THE R.P. ACT.

331. After having concluded that both respondent No. 1 and Sharad Pawar gave public utterances touching upon the personal character and conduct of the petitioner, the next prayer which has been vigorously canvassed on behalf of the Petitioner No. 1 is that he should be declared

as elected because had the respondent No. 1 not committed corrupt practices, he would have got overwhelming votes. It is necessary to observe that in the petition there is a clear prayer in that behalf and in the evidence, petitioner at the fact and has clearly stated that had respondent No. 1 and Sharad Pawar not committed the above corrupt practices under section 123(4) of the R.P. Act, he would have certainly been elected. There is averment to that effect in para 22 of the evidence and wherein the petitioner has deposed that—

"I would say that had I not been pointed as a corrupt candidate by my opponents, I would have been surely elected."

This would, therefore, show that the petitioner has, in clear terms, prayed for declaration in the favour in respect of the above constituency.

332. However, before probing into this prayer, it would be necessary to observe that some mandates are laid down by the Supreme Court in A.I.R. 1975 S.C. 349 in the case of V. Nagraj V/s. Dayanand Sagar. Justice Krishna Ayyer (speaking for the Court) observed in the following words:—

"But the first respondent (the defeated petitioner) ambition is not merely to destroy the declaration of the appellant (respondent No. 1 in the present case) but to instal himself as the M.L.A. through judicial process."

The Court in this behalf also observed in para 25 of the judgment—

"Courts do not elect candidates or assign in to Parliamentary seats. Those whom the constituency has not favoured the normal democratic process cannot be by-passed conveniently on the corrupt practices by the rival except in those exceptional cases where section 101 of the Representation of People Act stands fulfilled. You must win not only the election petition but the election itself."

The ratio which is underscored in these observations is that normally the Court should not tinker with the verdict of the electorate and should not try to impose its own candidate by the process of law. However, at the same time, it has been repeatedly laid down by the Supreme Court that the verdict of the electorate should not be tinkered with but at the same time, the purity of the election must be ensured. In his background, therefore, the case of the petitioner shall have to be considered. The Court in the same judgment of V. Nagraj has stated that under section 101(b) of the R.P. Act, but for the vote obtained by the returned candidate by Court finds that the returned candidate has secured the votes would have obtained a majority of valid votes. The High Court shall, after declaring the election of the returned candidate as void, declare the petitioner or such other candidate as the case may be to have been duly elected. It will have, therefore, to be seen from the above provision that if the Court finds that the returned candidate has secured the votes by committing corrupt practice, the Court can go into question as to what will the number of such votes secured by corrupt practice. The Supreme Court in the above case observed as follows :—

"The instances required by the section are that firstly the returned candidate must have obtained votes by operation of corrupt practices; secondly such tainted votes must be quantified with judicial assurance and thirdly after deduction of such void votes, the petitioner must be shown to have secured the majority of valid votes."

333. In the case of V. Nagraj, the Court found that the electorate had cast only 15 per cent of votes. The returned candidate had secured 15,486 votes whereas the first respondent (the petitioner) was close behind him with 14,412 votes. The Court further observed that both the petitioner and respondent No. 1 had secured votes between 14 per cent to 15 per cent. These were also other formidable candidates

whose performance, by no means, was poor. They were close behind the returned candidate and the Court, therefore, found that it was difficult to assure judicially that the votes affected by corrupt practice would be such that the ultimate result would tilt in favour of the respondent. The Court also found that there were no reasons adduced by the High Court in terms of the above requirements and hence the Court refused to concur with that finding.

334. The Court in the case of Nagraj further observed that the precedents in this field were very limited. Those precedents which have been referred in this judgment are reported in A.I.R. 1954 S.C. 686 in the case of Jamunaprasad V/s. Lachiram. In that case, the Court found that the Election Tribunal went on pure speculation and came to the conclusion that that could not be the conclusion which any reasonable man could, reach on the data set above. In A.I.R. 1955 S.C. 756 in the case of T. Nagappa V/s. Basappa, the Court declared the petitioner as elected because the Court could reasonably say that the respondent had carried out 47 voters in his bus and got their votes and if those votes were deducted, the difference of 34 between the returned candidate and the petitioner would be wiped out and the petitioner was, therefore, entitled to be declared as elected.

335. The learned advocate for the petitioner has contended that in the first instance the petitioner was very close to the elected candidate; that it was his first entry in this constituency; that he virtually represented the Congress even in this election and that if the corrupt practice would not have been committed, he was bound to be elected.

336. It is, therefore, necessary to set out few details and find out as to whether the petitioner has made out a case for his declaration. The undisputed facts are that the petitioner was elected as a candidate to the Parliament in five elections from 1971 to 1989. All along he has been contesting the election as a Congress candidate. However, when he asked for ticket for this election in 1991, he was declined and, therefore, he chose to contest as an independent candidate. In this behalf, the petitioner has deposed that the workers from South Nagar constituency rather prevailed upon him to contest from this constituency so that the petitioner could carry out some more beneficial activities. It must also be said that the petitioner has opened engineering college, polytechnic college and several other educational institutions in this South Nagar constituency. It seems that he has also established institutions outside the District. He has, to his credit, various medical colleges, various polytechnic colleges, various engineering colleges, various schools and colleges.

337. He has also deposed that he has opened more sugar factories in South Nagar constituency and these are the facts which have not been disputed by respondent No. 1. Respondent No. 1, on the other hand, has virtually admitted that his sphere of activities is much less than that of the petitioner.

338. It would be also seen that the petitioner continues to have link with Congress (I). He met Home Minister Shankarrao Chavan even after filing of the petition. He claims to have secured the support of Janata Dal but it would be evident that the elections of 1991 were necessitated because of the failure of the non-congress Government to muster majority in the Parliament. Rajiv Gandhi on behalf of congress refused to form Government and on that count, the Parliamentary elections of 1991 became absolutely necessary. All the same, it will have to be stated that the petitioner had close links with the Congress. He had fought previous elections as a candidate of Congress (I). It can, therefore, well be presumed that when petitioner chose to contest as a rebel Congress candidate, the voters must have very well known that he was a Congress candidate but had to contest the election as he was not given the nomination.

339. Regarding Janata Dal support, it will have further to be stated that the speeches of V. P. Singh in the election campaign of the petitioner could not have carried weight to pursue the voters to vote in favour of the petitioner because Singh was eased out of power. His Government's performance was well within the view of the voters and it cannot, therefore,

be said that the speeches by V.I.P.s. belonging to Janata Dal could carry any effective weight with the voters in this constituency.

340. Going to the statistical figures, it is also evident that the respondent No. 1 in his deposition at Exh. 328 has stated in the Parliamentary election of 1981, he had got about 1,00,000 votes more than the next candidate. In the election of 1989 he got about 1,50,000 votes more than the next candidate but when one looks to the election results of 1991, it will be manifest that the respondent No. 1 secured 2,79,520 votes whereas the petitioner Vikhe Patil secured 2,67,883 votes. The next notable figure is of 37,330 votes in favour of Advocate Zarkar, who claims to be the candidate of B.J.P. Sarode Kishore Dinkar secured only 402 votes who was also sponsored by Doordarshi Party. Ashtekar P.N., who has been sponsored by Indian Congress (Socialist Shorad-chandra Sinha) secured only 959 votes. Both respondent No. 1 and Sharad Pawar have categorically admitted that the contest was only between the Congress candidate and the independent candidate, who could well be termed as Congress rebel candidate and that was petitioner. It was, therefore, unlikely that the votes would have floated to other candidates.

341. It is pertinent to note that the respondent Deshmukh Bhagwan Rangnath secured 10,913 votes. Rest of the candidates have secured less than 1,500 to 1,600 votes. Deshmukh Bhagwan Rangnath was allotted the symbol of motorcycle whereas the petitioner was allotted the symbol of cycle. Respondent No. 1 has clearly admitted that (in his deposition at para Nos. 3 and 59) that the voters wrongly put the cross on the motorcycle because they were drunk. The petitioner has also deposed that because of this he lost quite a sizable number of votes. It can be judicially concluded that when Deshmukh Bhagwan Rangnath was comparatively an insignificant candidate, the figure of 10,913 votes would certainly include the voters who wrongly put their stamp on the motorcycle. When one looks to the symbol of cycle and also the symbol of motorcycle, the distinction is very narrow and rather insignificant. The illiterate voter may confuse himself and may treat motorcycle as a cycle and may put his vote on that symbol. This is important because Bhagwan Deshmukh has secured 10,913 votes. This number is far more than the number of votes secured by other candidates, except the B.J.P. candidate. It can well be assumed that at least 50 per cent of the votes from Bhagwan Deshmukh would have gone to the petitioner. Apart from that, keeping the guidelines in the case of V. Nagraj, it will have to be observed that the margin of votes in favour of respondent No. 1 considerably dwindled.

342. In the first election of 1984, he got elected by the margin of 1,00,000 votes; in 1989 he got elected by the margin of 1,50,000 votes. Surprisingly, in the election of 1991 his margin came down by 10 times and it remained at approximately 12,000 votes. This fact will have to be considered in the background that in this case, the percentage of voting seems to be between 80 per cent to 90 per cent. In the normal Parliamentary constituency, the number of votes is about 7,50,000. In this case, the total votes cast were 6,14,753. Out of them, 42,459 votes were rejected as invalid votes. Total valid votes were 6,02,294 out of which the petitioner secured about 44 per cent votes and respondent No. 1 secured about 46 per cent of votes. The margin was very close. The background was that the petitioner was known for carrying out various social activities in various fields. He had been the founder of various sugar factories in this constituency. He also opened several educational institutions. He had, therefore, established himself as an individual who could do very well for the constituency. His magnitude of operations have been quite large comparing that of respondent No. 1. The social workers in this constituency are prevailed upon him to contest from South Nagar constituency. His advent in this constituency was maiden but his march was so vigorous that he reached the figure of 2,62,883 votes in his first run in this constituency. This could not be without his established image in this constituency.

343. It has been urged on behalf of the petitioner that the march of the petitioner in this constituency was so significant that the leaders like Sharad Pawar had to rush through this constituency on more than 4 to 5 occasions to canvass for the respondent No. 1, whose fortune appeared to be endangered. Respondent No. 1 and Sharad Pawar resorted to character assassination of petitioner. This was necessitated because there was no other ground to impress upon the voters not to vote for the petitioner. Several political insinuations were made with which we are not concerned but it cannot be lost sight of that both respondent No. 1 and Sharad Pawar described the petitioner as an outsider to this constituency and thereafter made serious imputations which have been hitherto recorded as reckless and unwarranted. It can, therefore, be easily assumed that had the corrupt practices not been committed by the respondent No. 1 and the national leader like Sharad Pawar, quite a sizable number of votes would have tilted in favour of the petitioner. At least 5 per cent of votes would have gone to the petitioner.

344. His first performance in the constituency has been extremely significant. Again the voters would also think that they are voting for none other than the Congress candidate. The petitioner had retained the link with Congress party and in this background, the voters must have thought that if the petitioner is returned, he is none other than the Congress candidate. Ultimately the affinity of the petitioner is with Congress (I) and no other party. His reliance on Janata Dal was rather temporary. The performance of Janata Dal would never have persuaded the petitioner to rely substantially on their votes. The previous history indicated that except the Congress candidate, no other candidate could establish his fortune in this constituency. In this background, I feel that the wasted votes would not be less than 12,000. As indicated, the votes cast in favour of motorcycle would also have been available to the petitioner. The petitioner in this background would have secured quite a large number of votes overcoming the margin as indicated above.

345. The imputations have been very serious and it is well known that the voters look upon with askance as to whether such a candidate should be voted or not. But in absence thereof, the voters would have chosen to vote for petitioner, who was returned as a Member of Parliament in previous five elections. I, therefore, feel that the guidelines laid down in the case of V. Nagraj (supra) are fully complied with in this case. It is judicially possible to work out the number of votes which would have gone to the petitioner had the corrupt practices not been committed. For all these reasons, I feel that the petitioner is entitled to be declared as elected. It will have also to be remembered that the petitioner has secured 44 per cent of votes and it cannot, therefore, be said that he has been foisted as a candidate by the Court in this petition.

346. Emphasizing again, respondent No. 1 very well knew that the petitioner is a formidable candidate and that with his reputation as the Member of Parliament, spanning over about two decades and the vast number of sugar factories, educational institutions established by him in the district of Nagar, respondent No. 1 was almost likely to be trounced by the petitioner. The impending disaster, therefore, would only be stemmed by dealing a body blow to the petitioner by touching upon his personal character and conduct. This is well evident from the slim margin with which respondent No. 1 won the election and the petitioner lost. In absence of any such propaganda, the petitioner could have gone much ahead of the respondent No. 1. The electrifying performance of the petitioner of almost equalling respondent No. 1 in the race in his maiden appearance in this constituency, can certainly persuade the judicial mind that "Goddess of success was to prefer the petitioner than to respondent No. 1". Petitioner had the Congress robe on his person which he had not openly discarded. The massive counter propaganda by respondent No. 1 with the help of Sharad Pawar, the acclaimed leader of Congress party, the Defence Minister in the Union Cabinet and the Chief Minister of the State then, could not brighten the picture for respondent No. 1 who could, with great efforts, wrest a passing margin of votes over the petitioner. Minimum 5 per cent of votes cast could well be attributed to the corrupt practice by the respondent No. 1 and if those votes are deducted, the win by the petitioner was almost certain.

347. Before parting with the matter, I must also refer to the objections raised by the advocates in the evidence of respondent No. 1 at Exh. 328. The objections raised during the cross-examination of the witnesses will have to be rejected because the cross examination is meant for impeaching the credibility of the witnesses in all spheres. However, I would have been inclined to uphold the objections regarding the questions put in the re-examination of the witnesses by the learned advocate for the respondent No. 1. But I am unable to accede to those objections because the learned advocate for the petitioner has relied on those replies in the re-examination in furtherance of his arguments. Hence those objections shall have also to be rejected. Similarly applications filed at Exhs. 315 to 316 by respondent No. 1 and respondent No. 6 toeing the stand taken by Notices will have also to be rejected, for which extensive reasons are adduced in the main judgment. Generally it has been observed that these applications have been filed at a very late stage and the appropriate stage had already passed.

348. Now, coming to the question of costs, it will be seen that elaborate evidence has been led by both the parties. The evidence went on for number of months. One witness was examined on commission on behalf of the petitioner. The respondent No. 1 was examined on commission and it seems that large amount was spent for payment of the Commissioner. The numerous documents have been tendered on behalf of the parties and in that light, respondent No. 1 should be made to pay the costs of Rs. 30,000 to the petitioner. It must also be remembered that respondent No. 6 has been fighting this litigation when it was really not necessary. The learned advocate for the respondent No. 6 contested at all the positions at all the stages and, therefore, he must also be made to pay the costs of Rs. 5,000/-. Accordingly, I proceed to pass the following order.

ORDER

- (i) The Election Petition is allowed.
- (ii) The election of the respondent No. 1, Gadakh Yeshwantrao Kankarrao from 39 Ahmednagar Parliamentary constituency is hereby declared as null and void as the respondent Gadakh Yeshwantrao Kankarrao is proved to have committed corrupt practices under section 123(4) of the Representation of People Act.
- (iii) The notice against Sharadchandra Govindrao Pawar is made absolute under Section 99 of the Representation of People Act and Sharadchandra Govindrao Pawar is named as a person who has been proved to be guilty of corrupt practices under Section 123(4) of the Representation of People Act. The respondent No. 1 shall pay the costs of Rs. 30,000/- to the petitioner and likewise respondent No. 6 shall pay the costs of Rs. 5,000/- to the petitioner.
- (iv) Registrar to take action under section 103 of the Representation of People Act and forward the copy of the notice under section 99 of the Representation of People Act and the judgment and order in this Election Petition to the Election Commissioner and also to the Speaker or the Chairman of the House of Parliament or the State Legislature, as may be found necessary.
- (v) The petitioner E. V. Balasaheb Vikhe Patil is declared as a candidate duly elected from the above Parliamentary constituency.
- (vi) Petitioner be refunded his security deposit.

March 30, 1993.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

RECRIMINATION PETITION NO. 1 OF 1991

IN

ELECTION PETITION NO. 2 OF 1991

1. Yeshwantrao Kankarrao Gadakh ..Petitioner

Versus

- | | |
|---------------------------------------|---------------|
| 1. E. V. alias Balasaheb Vikhe Patil, | Respondent |
| 2. Ashtekar Pramod Nikanth, | Respondent |
| 3. Kate Sudhakar Petras, | Respondent |
| 4. Gadrej Rurtum Kermani, | Respondent |
| 5. Dethumukh Bhagwan Rangnath, | Respondent |
| 6. Nagen Rambhau Maruti, | Respondent |
| 7. Popat Baburao Sagade, | Respondent |
| 8. Raut Eknath Baba, | Respondent |
| 9. Adv. Rajabhau Zarkar, | Respondent |
| 10. Shekatkar Ganpat Sakharam, | Respondent |
| 11. Sarode Kishor Dinkar. | ..Respondent. |

S/Shri S. B. Talekar, V. D. Sapkal and S. D. Dhongade,
Advocates for the Petitioner.

Shri V. D. Hon with Shri S. B. Mhase, Advocates for Respondent No. 1.

Respondent Nos. 2 to 7 and 9 to 11 Served.

Shri P. P. Phalke, Advocate for Respondent No. 8.

CORAM : A. A. HALBE, J.

30th March, 1993

JUDGMENT :

Sequel to Election Petition No. 2/1991, filed by the petitioner Balasaheb Vikhe Patil the returned candidate—Respondent no. 1 in the Election Petition, has filed this Recrimination Petition under Section 97 of the Representation of People Act (hereinafter for short 'R. P. Act'), claiming that the petitioner in the Election Petition is disqualified from being elected on account of the corrupt practices, detailed below. It may be stated that in this judgment, Respondent no. 1 in the Election Petition is indeed the petitioner. However, in order to avoid confusion, Respondent No. 1 is mentioned as Respondent No. 1 although he is the petitioner in the Recrimination Petition.

2. Respondent No. 1 in his Recrimination Petition has contended that he is a registered voter in Ahmednagar Constituency and that he had contested election along with other candidates and that he was declared elected in the counting of that Parliamentary Elections of June, 1991. He was declared elected from 39 Ahmed Nagar Constituency on 16-6-1991 by the Returning Officer. The Recrimination Petition was filed with a view to show that disqualification has been incurred by the Petitioner (Respondent No. 1 in Recrimination Petition) to contest the election on the ground that petitioner had committed corrupt practices under Section 123 (4) of the R. P. Act. The petitioner herein—Respondent No. 1 has been elected to the Parliament twice. He is in active politics since last 25 years and held several important posts, such as Sabhapati of Panchayat Samiti, Ahmednagar, Vice President of Zilla Parishad, Ahmednagar, President, Zilla Parishad, Ahmednagar, Director and now Chairman of Mula Sahkari Sakhar Karkhana, Sonai. He has acquired the distinction of being one of the most honest, clean, straight-forward politician and he is known for his contribution to the social cause and also to the cause of agriculturists.

3. The Respondent No. 1 has stated that, the petitioner, on the other hand is a person having manipulative skills, opportunism and is a professional politician. He has set up several trusts, educational institutions and have been running on the commercial basis. The petitioner never cared for either principles or either in politics and here has been a record of his changing political parties to suit his convenience.

4. Coming to the details, Respondent No. 1 has stated that at the meeting of Jamkhed on 7-5-1991 at Bajartal in front of office of Grampanchayat, the petitioner spoke that voters would be prevented from voting for him, that the polling booths could be captured with the help of Gangsters, that the Industrialist from Bombay was there to help

Respondent No. 1. He also spoke that he had an information that Congress (I) had taken help of well-known Industrialist by name Dhirubhai Ambani and a room was booked in his name at Ahmednagar. This meeting was reported in news papers—Nava Maratha, Samachar and Gavkari. Crowd of four thousand voters had attended the meeting. The above papers have wide circulation in the district. All these statements made by the petitioner were false. He knew them to be false. The petitioner knew that they were not true. These statements had the tendency to affect the election prospects of Respondent No. 1 and, in fact, these statements did affect the chances of Respondent No. 1 of getting elected with a big margin. These statements were calculated to prejudice the prospects of the petitioner at the election. The copies of the news extracts are annexed to the Recrimination Petition. This meeting was attended by voters, including Vijay Vithal Jadhav of Mughalpur, Jamkhed and Vijayseth Popatlal Kotburi of Jamkhed. These persons had worked for petitioner. Respondent No. 1 came to know of these speeches after going through the papers. The speech also contains that Rajiv Gandhi the President of All India Congress Committee and the former Prime Minister had ordered Dhirubhai Ambani of Reliance to do everything to defeat Respondent No. 1 (Petitioner in E. P.). Subhash Chandmal Gundecha of Nava Maratha had covered this meeting, and recorded the same in Samachar of 9-5-1991. Baburao Kadekar of Samachar published the account in that paper. Ramdas Dhamale is working as reporter for Gavkari. Respondent no. 1 has contended in this Recrimination Petition that these statements were false, they were believed to be false by the petitioner and they did touch upon the personal character and conduct of the Respondent no. 1. It gave an impression that Respondent no. 1 was engaged in gundaiism and wanted to capture booths, to prevent the voters from voting for the petitioner.

5. Respondent no. 1 has contended that the petitioner published several cartoons, wherein the Respondent No. 1 was shown as a bull indicating that he was full of inefficiency, corruption, rowdysm and terrorism. He is shown as a person involved in economic exploitation and also in the habit of lodging false police cases. This caricature was aimed at tarnishing the personal character and conduct of the petitioner. The face of the bull shown in the cartoon had a considerable resemblance with the face of the petitioner. The bull has been named by the Respondent No. 1. The above words were aimed at tarnishing the character of the Respondent no. 1 and they were false.

6. In the other cartoon also it is shown that there was a long queue of villagers seeking for drinking water, whereas Respondent no. 1 is shown as busy in drinking liquor and offering Vodaka to the thirsty villagers. Vodaka is a kind of liquor. These cartoons were published in the name of "Newasa Vikas Manch" printed at Neat Printers, M.I.D.C., Ahmednagar. Those cartoons are financed by the petitioner. One Manohar Hiwale was entrusted with the work of getting those cartoons published and Hiwale got about 20,000 copies of these cartoons printed from Neat Printers, M.I.D.C., Ahmednagar. Petitioner had arranged for the distribution of these cartoons throughout the Constituency. He had engaged several persons for distribution of these cartoons at Bus-stand, theatres and other public places and places of entertainment. These cartoons were distributed amongst the passengers and by-passers. They were being distributed at Shani Chowk and Bajartal at Srigonda on 10-6-1991; at S. T. Stand, Sonai, on the same day; at Newasa also on the same day. Similarly, they were distributed at Jamkhed, Ghodegaon, Shevgaon, Ahmednagar, practically on the same day through various persons. According to the Respondent no. 1, these cartoons were published, printed and distributed not only with the consent of the petitioner, but at his costs and at his behest. Now, so far as these cartoons are concerned, the advocate for the Respondent no. 1 has practically conceded that there was no evidence available with him to show that those cartoons were got printed, published and distributed by the petitioner

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or that he has managed for getting those cartoons printed. In view of this, the details of the name through whom the cartoons were distributed do not appear to be necessary.

7. The Respondent no. 1 has contended that the petitioner possessed huge stock of bottles of country liquor, a jeep containing huge stock of country liquor was found. Similarly, huge stock of liquor was found in the election office of the petitioner and in this behalf, the details are as follows.

On 12-6-1991 at about 00.15 hours, the Police of the Police Station, Srigonda, received a message that the petitioner was distributing liquor to the voters so that they should vote for petitioner and refrain from voting for Respondent no. 1. Accordingly, the police visited the election office of the petitioner, situated in the bungalow of Rajkumar Shantilal Gundecha. Police Head Constable—Warate took the search of the jeep bearing registration No. MXZ 7114, which was parked in front of the bungalow of Gundecha. 36 bottles of 750 ML, 93 bottles of 180 ML containing country liquor manufactured and labelled in the name of Sanjivani Sah. Sakhar Karkhana Ltd. were found. The panchanama was made. Tukaram Appaji Darekar and Laxman Kashinath Bhodke were the panchas, and they signed the panchanama, prepared by Warate. Thereafter, police visited the election office of the petitioner, the bungalow of Gundecha, but the same was locked. The key was asked for as it was suspected that there was huge stock of liquor bottles in those premises. All the persons present including Gundecha stated that the key was with the Chief Propaganda Officer of the petitioner. However, no keys were traced and the police ultimately broke open the room and recovered 600 bottles of 750 ML, 330 bottles of 375 ML and 990 bottles of 180 ML containing country liquor manufactured by Sanjivani Sahkari Sakhar Karkhana. Thus police recovered huge stock from the election office of petitioner at Srigonda under panchanama. Baban Shankar Bhangre and Ashok Bajirao Honrao acted as panchas to this seizure. Further, 30 small bottles and 11 big bottles were also found in the election campaign office of the petitioner. Those bottles were seized under panchanama signed by Tukaram Appaji Darekar and Laxman Kashinath Ghotke. Several statements were recorded including that of driver and others. Driver of the jeep Prakash Vithoba Chavan resident of Loni stated that the jeep was engaged by the petitioner on the daily rate of Rs. 300. The workers and canvassers of the petitioner asked to supply the bottles of country liquor to Karle Patil and Zende Patil at Chikhali. However, as the stock was seized by the police, he could not supply them to above persons. As these bottles were seized from the election office of the petitioner, it was clear that he was bribing voters and electors. Petitioner had financed the purchase of this huge stock of country liquor. These bottles were distributed in several residential areas of Anant Malla adjacent to Srigonda. Bhausaheb Chandrabhan Kadu was the Chief Election Propaganda Officer for the petitioner. He had visited Anant Malla on 10-6-1991 at 8.30 P.M. He had also visited Shani Chowk with several workers and canvassers in the jeep. Kadu also visited Sutan Tande at Shani Chowk gave him two bottles of 750 ML. Kadu also requested Dattaba Jhumbar Anantkar to vote for petitioner while giving two bottles of country liquor, and further asked Anantkar to come to the office if he needed more stock. Kadu also distributed liquor bottles amongst several residence of Srigonda, including Ashok Murlidhar Honrao on 8-6-1991 at about 9.00 p.m. On that day, several bottles were distributed by Kadu from this jeep. Ashok Murlidhar Honrao was given one bottle of 750 ML, two bottles of 375 ML and 2 bottles of 180 ML by Kadu with a request that Honrao should vote for the petitioner. The petitioner has thus committed corrupt practice under section 123(1) of the R. P. Act. The respondent no. 1 has, therefore, contended that the petitioner has committed corrupt practices punishable under section 123(1) and (4) of the R. P. Act and that he should be disqualified under the above provisions of the R. P. Act.

8. In the written statement at Ex. 3 the petitioner (Respondent No. 1 in this Recrimination Petition) has contended that the petitioner is not a seasoned politician or a person possessing manipulative skills. He has never operated

educational institutions on commercial basis. On the other hand, he has been responsible for the establishment of public trusts and charitable organizations and also other institutions in the various fields.

9. The petitioner said that the meeting was held at Srigonda on 7-5-1991, but flatly denied that he made any imputations touching upon the personal character and conduct of Respondent no. 1 (petitioner in the Recrimination Petition). Even if for a moment the speeches recorded in the Recrimination Petition are accepted to be as they are, still those imputations do not touch upon the personal character and conduct of Respondent no. 1 and, therefore, they are not calculated to prejudice the prospects of the Respondent no. 1 and, hence, those extracts do not attract the provisions of Section 123(4) of the R.P. Act. Neither Vijay Vithal Jadhav nor Viju Kothari attended that meeting. They also do not work for the petitioner. The Respondent no. 1 must strictly prove the statements in the Srigonda meeting of 7-5-1991. He also denied that he was responsible for printing, publishing and financing cartoons referred in the Recrimination Petition. These cartoons were never printed by the petitioner at his expense from Neat Printers, MIDC, Ahmednagar. The petitioner is also not aware about the existence of Newasa Vikas Manch, which is purported to have published these cartoons. He never entrusted any such work of distribution of cartoons to Vilas Manohar Hiwale. The distribution of cartoons at various places referred in various paragraphs is also emphatically denied by the petitioner. The names mentioned therein are also not known to the petitioner. The cartoons did not lower the image of the Respondent No. 1 in the estimation of general public. The cartoons also do not touch upon the personal character and conduct of the Respondent no. 1 and there was, therefore, no question of damage to the conduct and character of the petitioner. Those cartoons depict the public life of the Respondent no. 1 at best. Regarding the country liquor, the petitioner has contended that he never engaged any jeep or premises in the bungalow of Gundecha at Srigonda. There was, therefore, no question of liquor bottles being distributed on his behalf. The petitioner has no concern with Sanjiwani Sahkari Sakhar Karkhana. The quantity of liquor seized from this premises have no connection whatsoever with the petitioner. Bhausaheb Kadu was never acting on behalf of the petitioner and Bhausaheb Kadu informed the petitioner that he had not distributed liquor to anybody named in the Recrimination Petition. The petitioner never financed the purchase of liquor of such a large scale, nor the petitioner distributed liquor amongst the voters. According to the petitioner, all this story is a cock and bulls story made up by Respondent no. 1 as a counterblast to the main Election Petition. Even the Recrimination Petition deserves to be dismissed for non-compliance of Section 83 of the R.P. Act. For all these reasons, petitioner contended that the Recrimination petition deserves to be dismissed.

10. On these pleadings, the issues are framed at Ex. 7. They are as follows.

- “(1) Whether the Petitioner, original Respondent proves that Respondent no. 1 (Petitioner in the Election Petition) on 7-5-1991 at Jamkhed spoke the public meeting touching upon the personal character and conduct of the petitioner, though the speaker knew the allegations were false and not true to his knowledge as detailed in Paras 8, 9, 10 and 11 of the Recrimination Petition?
- (2) Whether the petitioner proves that Respondent no. 1 and his workers with his consent printed, published and circulated cartoon Ex. ‘R-7’ in the Constituency and that the contents thereof touched the personal character and conduct of the petitioner as detailed in Paras 14 to 26 of the Petition ?
- (3) Whether the Petitioner proves that Respondent no. 1 (Election Petitioner) committed corrupt practices under Section 123(1) of the R. P. Act by storing

and distributing country liquor and foreign liquor bottles as detailed in Paras 27 to 37 of the Election Petition ?

- (4) Whether the Petitioner proves that Respondent No. 1 is guilty of corrupt practices under Section 123(1) and (4) of the R.P. Act and is liable to suffer action under section 97 of the R.P. Act ?”

11. My findings to the above points are as follows.

POINT NO.	FINDING
(1)	No.
(2)	No.
(3)	No.
(4)	No.

REASONS

12. The respondent has examined as many as 10 witnesses in support of the Recrimination Petition and they are—

Witness No. 1 Rajkumar Fattasing Valve, Police Head Constable at Exh. 267; witness No. 2 Laxman Tukaram Ghaitadak at Exh. 268; witness No. 3 Murlidhar Shirdhar Varat, Head Constable at Exh. 269; witness No. 4 D.P. Singh, Inspector of State Excise, Ahmednagar at Exh. 277; witness No. 5 Subhash Kisan Borse, P.S.J. at Exh. 279; witness No. 6 Baban Shankar Bhange at Exh. 280; witness No. 7 Ashok Bajirao Honrao at Exh. 297; witness No. 8 Tukaram Appaji Darekar at Exh. 302; witness No. 9 Laxman Kashinath Bodke at Exh. 305 and witness No. 10 Sultan Mohammad Tade at Exh. 308/A. It may be stated that some of the witnesses examined by the respondent No. 1 in the Election Petition have also spoken in regard to the finding of huge stock of liquor from the bungalow of Gundecha, which is claimed to be the election office of the original petitioner. But it would be proper to dilate on the evidence which has been led in support of the Election Petition.

13. Now coming to the first instance of the publication of the newspapers, it is virtually not disputed by the original petitioner that he had spoken as suggested in the Recrimination Petition. It is urged that even if these publication are taken as they appeared in the annexures to the Recrimination Petition, they would not amount to corrupt practices under section 123(4) of the Representation of People Act and there is a lot of substance in this submission. In Exh. R-1 annexed to Recrimination Petition, it would be found that the utterances given by the original petitioner can be worded as follows—

“With the help of Bombay gangsters and the industrialists, there would be attempt to prevent the voters from going to polling booths. In order to defeat petitioner, the help of one prominent industrialist was taken and that one room was booked in the hotel. This was out of frustration in the minds of the Congress workers that the Congress candidate may be defeated.”

14. In Exh. R-2, which is the extract of Dainik Samachar dated 9-5-1991, virtually the same statements are reproduced and they are—

“Those persons who had left Congress and joined V. P. Singh and Chandrashekhar had again joined Congress and the Congress gave tickets to those persons and declined the ticket to the petitioner because he had taken up the question or agriculturalists in the Parliament. Rajiv Gandhi was determined to defeat him and for that purpose, the Gundas were engaged to take polling booths in possession. There is extensive campaign in 39 Parliamentary constituency.”

In Dainik Gaonkari, Exh. R-3 of the same date, practically the same statements are reproduced. The English translations are to be found at Exhs. R-4, R-5 and R-6. In this regard, before probing into the evidence, it would be necessary to observe that even respondent No. 1 in his evidence of Exh. 328 para 181 page 167 has clearly stated that in those speeches, there is no reference to imputations touching upon the personal character and conduct of the respondent No. 1. Even on fair assessment of the speech, it would be found that what is alleged is that the congress party was determined to defeat the petitioner Patil and for that purpose, had engaged Gundas and industrialists.

15. On the reckoning, it can be said that they directly or indirectly relate to the personal character and conduct of the respondent no. 1. No further discussion appears to be necessary except that in papers at Exhs. B-46 to B-50, Hindustan Times, which have been referred in the cross examination of the respondent No. 1, there are news reports which show that in the previous election at Amethi, booth capturing had taken place to defeat Rajiv Gandhi. It is pertinent to note that at that time, the present petitioner was the member of Congress (I) party. He, therefore, apprehended that the same mode might be adopted by his opponents and the learned advocate for the petitioner has contended that in this context, these remarks were made. They did not reflect upon the personal character and conduct of the respondent No. 1.

16. I feel that this submission appears to be consistent with the evidence on record. Even the learned advocate for the respondent No. 1 could not lay finger on any part of the speech or on any authority of Supreme Court or any other Court to show that the remarks made against the party leader or the party would be remarks against the candidate. They have political overtones. In A.I.R. 1975 S.C. 1514 it is clearly observed that remarks against the party leader or the party would not tantamount to remarks or utterances against the candidate. Hence so far as the first allegation in regard to the speech at Jamkhed is concerned, it will have to be observed that the speech does not amount to corrupt practice under section 123(4) of the R.P. Act.

17. So far as the caricatures in pamphlet at Exh. 49 are concerned, all those caricatures reflect upon the political activity of respondent No. 1. They do not reflect upon the personal character and conduct of the respondent No. 1 and it has been laid down on more than one occasion that criticism about the political image of the candidate would not come within the scope of section 123(4) of the Representation of People Act. In A.I.R. 1986 S.C. 717 in case of Ramchandra Patil V/s. Hardayal, it has been held that the advertisements or paper criticism does not come within the meaning of corrupt practice under section 123(4) of the R.P. Act when they relate to the political character of the candidate. If the caricatures are scrutinised minutely, it would be manifest that they reflect upon the political image of respondent No. 1. But apart from that, there is no evidence whatsoever to show that the Neat Printers, M.M.D.C., Ahmednagar was financed by the petitioner in publication of those caricatures.

18. The learned advocate for the respondent No. 1 has fairly conceded that he has not been able to obtain the evidence to show that the Neat Printers shown on the cartoons had printed this pamphlet Exh. 49 at the instance of the original petitioner. Hence on that count also, the respondent No. 1 cannot

be heard to say that the petitioner had carried out character assassination in this pamphlet Exh. 49.

19. Apart from the above observations, even if Exh. 49 is glanced at, it would be found that the cartoons described the bull Shawant Gadakh as one filing wrong cases obstructing the members of public by terrorism, gundaism and corruption and also an inactive bull. In other caricature, queue of people was shown in search of drinking water whereas a person is seen in a car giving Vodka to the thirsty people. In other cartoons various problems are posed and inability of the respondent No. 1 and his other leaders to solve them. The third cartoon shows that inspite of leaders being in favour of the original respondent No. 1, the scales tilt in favour of original petitioner. In the further cartoon, petitioner is shown as calling the election war as a war between sugar barons and benevolent persons i.e. petitioner himself. (Respondent in Recrimination Petition) it would be thus found that this criticism is levelled against the political image of the respondent No. 1.

20. Now coming to the incident of 12th June, 1991, it has been the attempt on the part of the respondent No. 1 (petitioner in Recrimination Petition) to show that the house of Gundecha at Shrigonda was engaged by the petitioner for his election campaign. On 12-6-1991 in the early hours on the basis of information, police raided that office and found few bottles from the jeep vehicle and few bottles from one room said to be the office room of the petitioner. The adjoining small room was broken open on the next day and liquor worth Rs. 27,000 was found from that room. That liquor was in bottles of various capacity. The learned advocate for respondent No. 1 has urged that this was nothing but proposed distribution of liquor amongst the voters to attract their votes. This was also an offence under section 61 (1)(b) of the Bombay Prohibition Act. The main person behind the scene was none else other than the original petitioner and this was the corrupt practice which is covered under section 123(1) of Representation of People Act.

21. As against this, the learned advocate for the original petitioner has contended that the respondent No. 1 has not been able to bring anything on record to show that Gundecha had leased out or let out or even given those premises to petitioner rent free. Even the police and other witnesses have not been able to procure any evidence to establishing any relationship between Gundecha and the petitioner. The petitioner was not made an accused in the prosecution and hence the allegations of the petitioner distributing liquor is a brazen lie.

22. The first witness Rajkumar Fattasing Valvi at Exh. 267 had deposed that the election office of the petitioner was in front of Shrigonda Police Station in Shani Chowk. There were two election offices of the petitioner; one in Teli Galli and the other was in the Court Galli. He was asked to guard the room which was sealed by P.S.I. Borse and the Tahsildar. That room was about 5'x10' in area and the adjoining room the election campaign office of the peti-

tioner was used. He entered the room which was used as the election office. There were posters and pamphlets bearing the name of the petitioner in that room. He is unable to say as to what other articles were there in that room. He handed over the charge to new recruits. He had also seen jeep vehicle carrying the posters of the petitioner. Tankers were parked in front of bungalow of Gundecha. However, in the cross examination, he has stated that he did not visit Shrigonda after this posting for a short period. He is unable to name the owner of the premises from where the liquor bottles were found. He had sealed the door of the election office in the Court Galli but he has not stated to anybody that in the adjoining room, there were posters and pamphlets bearing the name of the petitioner. He has also stated that he omitted to say before the police that that room was the election office of the petitioner and that there were posters and pamphlets in the name of the petitioner in that room. Likewise he had not stated that he had seen jeep vehicle bearing the posters of the petitioner and so about the tankers being marked in front of that bungalow.

23. He also did not state that there were two election offices of the petitioner at Shrigonda. He has denied the suggestion that the respondent No. 1 was the Member of Parliament of the congress ruling party and hence he has deposed as above. The important portions have been omitted from the police statement and this would show that Valvi has rather transgressed his knowledge about the election office of the petitioner. The material omissions in the police statement have always been looked upon by the Courts as arousing suspicion about the credibility of the witness. The above statements which are omitted from the police statement are indeed material statements implicating the petitioner in this affair and in that light, it is difficult to hold that Valvi establishes any nexus between the premises of Gundecha and the petitioner. Valvi has not deposed that these statements were deliberately omitted by the Investigating Officer.

24. Laxman Ghaikad at Exh. 269 has stated that he has been working at Pravaranagar at present. He had accompanied Inspector Singh to the premises which were sealed. When the seal was broken open, he found about 400 to 450 bottles of various types containing liquor in that room. Those bottles had slips of Sanjeevani Sugar Factory. The necessary panchanama was prepared incorporating all details about this seizure. The goods, according to him, were worth Rs. 25,000 to Rs. 30,000. He has categorically stated that the offence was registered against Rajkumar Gundecha. He did not come across any office room. He has denied the suggestion that he is under influence of petitioner as he is attached to Pravara Nagar Distillery. I feel that this witness does not advance the cause of the respondent No. 1 in his Recrimination petition. He is a person who did not see any involvement of petitioner in these premises. Neither the posters nor the pamphlets were found and hence the evidence of Ghaikad shall have to be treated as an evidence which does not establish the connection of the petitioner with these liquor bottles. He is not treated hostile by respondent No. 1.

25. The next witness Murlidhar Varat at Exh. 269 has stated that on receipt of the information at Shrigonda Police Station in the midnight between 11-6-1991 and 12-6-1991, he and other police went to that spot. They took two panchas. The jeep was found in the premises of Gundecha. Varat asked the driver of the jeep who gave his name as Prakash Vithoba Chavan and further told that he was the owner of the jeep No. MXZ 7114. Varat however, did not come across posters on the jeep. Varat found 36 big size bottles and 93 small size bottles containing liquor bearing the labels of Sanjeevani Sahakari Sakhar Karkhana, Shahajan Nagar. He has also stated that there were two roads to the structure from where further liquor bottles were attached. It would be pertinent to note that neither Chavan nor Gundecha have been brought by the respondent No. 1 in support of this story. He has stated that they went inside the room and there were posters and pamphlets in the name of the petitioner and there was also voters' list. In the adjoining room, there was kitchen platform and beneath the platform, the bottles were kept, more particularly behind the voters' list. They came across about 41 bottles of different sizes. They had the labels of Rocket of Pravara Nagar Sugar Factory. Tukaram Darkar and Laxman Bodke were the panchas who witnessed the seizure. Some persons were sleeping outside these premises but as soon as police reached there, those persons woke up and went away. The adjoining small room was locked and when they enquired about the key, the owner told them that those keys were with Kadu, who was the Election Agent of the petitioner. Varat deputed a person to bring the keys but the keys could not be traced. The room was, therefore, locked and sealed with slips bearing the signature of the Tahsildar Bughe and a panchanama to that effect was recorded. He knew the panchas who were the reporters. The jeep vehicle was attached and the F.I.R. Exh. 270 was lodged under his signature. He had also recorded the statements of Rajkumar Gundecha and Pravin Ashok Wagh and other persons by name Purushottam Kashinath Wagh and Prakash Vithoba Chavan. Surprisingly enough, he did not see the posters and banners which were lying in that room. He claims that Chavan told him that since last 14 days, he was driving the vehicle on payment of Rs. 300 p.m. and that the vehicle was engaged for election campaign of the petitioner. The workers of the petitioner gave those bottles to him for being given to Zonde Patil and Karle Patil at Chikhali. He however did not name the workers of the petitioner. According to Gundecha, Prakash Bidwai, Bhausaheb Kadu, Subhash Dane and J. B. Pathan had met him and wanted the premises of Gundecha for the workers of the petitioner, as the other accommodation was not enough. Gundecha further stated to Varat that he trusted those persons and had, therefore, handed over the keys to them. The keys were given to Bhausaheb Kadu. No rent was charged by him. However, on the next day i.e. on 12-6-1991 at about 11 a.m. he along with other persons namely Excise Inspector and panchas and Constables went to the locked room. As Gundecha did not possess the key of that room, the lock had to be broken open. Baban Shankar Bhange and Ashok Bajirao were the panchas. About 600 bottles of 750 ml., 330 bottles of 375 ml. and 990 bottles of 180 ml. were found from that room. They had the labels of Sanjeevani Sugar

Factory and the worth of those bottles including the contents was Rs. 27,870.

26. The photographs at Exhs. 271, 272 and 273 are the photographs of the same place from where the bottles were seized. Varat had been at Shrigonda for about two years and according to him, photograph Exh. 275 is the backside of the house of Gundecha. In the cross examination, he has stated that the road leading from Ravivar Peth to Shani Chowk is known as Teli Galli and the temple of Mohammad Maharaj is at a distance of 400' to 450'. The election office of the petitioner in Mehta's house was at the distance of 250' from Shani Chowk and he has categorically admitted that this office is seen in photograph at Exh. 191. It is clear that no liquor bottles were found from Mehta's house. It would be seen that as per the photographs Exhs. 271, 272 and 273, the structure is one storied structure whereas the so called Mehta's house is, as seen in photographs at Exhs. 191 and 194, all throughout a two storied building.

27. It would be also pertinent to observe that the premises at Exhs. 271 to 273 have the Ota or a common platform in front whereas there is no similar Ota near the two storied building which bears the board of the election office of the petitioner, and this has been admitted by the witnesses for the respondent No. 1. He has also stated that he did not come across any document to establish relationship between the petitioner and Gundecha with respect to these premises. He also could not gather the name of persons sleeping outside these premises on Ota. Likewise Gundecha did not tender any document about having given possession of these premises to the petitioner. He has also admitted that petitioner has not been implicated as an accused in this case. Only Gundecha has been made the accused and it would be pertinent to observe that, had Gundecha given those premises to the petitioner, which were used to store liquor bottles, Gundecha would have certainly stepped into the witness box to deny his involvement in this corrupt practice. Ultimately Gundecha is facing prosecution and not the petitioner or Bhausaheb Radu. Gundecha, although cited as witness by respondent No. 1, is not examined.

28. He admits that the premises from where the bottles were found was not the election office of the petitioner. Only the workers of petitioner used to rest there. He had however not recorded the statements of any person to show that those persons sleeping on the Ota were the workers of petitioner. It is his guess based on the movements of the vehicles and the persons therein. The evidence of Varat, therefore, also does not establish any involvement of the petitioner in possession of these liquor bottles. On the other hand, he has categorically stated that no bottles were found from the election office of the petitioner as evidenced in the photograph Exh. 194.

29. It is not disputed that photographs Exhs. 191, 194, 143 and 146 are the premises which bear the name of the petitioner in respect of his election. However, photographs Exhs. 44 and 45 are the

premises from where the bottles and cartoons were seized. As stated above, these premises are one storied premises whereas the premises at Exhs. 191 are two storied premises all throughout. On a close scrutiny of those photographs, it would be also found that the room from where the liquor bottles were seized has the Asbestos cement sheet as the roof. It is out of the alignment of the house and not in line with the Ota. Such a situation is not be seen in the above bungalow at Exhs. 43, 46, 191 and 194.

30. Witness No. 4 D. P. Singh, Inspector of State Excise at Exh. 277 has stated that he had called for keys of the room from where the bottles were seized but the owner did not give the name of the election campaigner or even the name of the person for him he was campaigning in the election. He has stated that the contents of the panchanama Exh. 278 are true. In the cross examination, he has categorically admitted that he did not see the board outside the premises showing that it was the election office of any particular person.

31. Witness, Subhash Horde at Exh. 279 states that during the election period, he was posted at Shrigonda as the P. S. I. He investigated this crime and had recorded the statements of various persons including Kadu and Chavan and others. He told Valvi that there was suspicion that Muddamal liquor bottles were in the office premises of the petitioner. He has further stated that he did not make petitioner as an accused because he found that there was no reliable evidence to establish the nexus between the premises and the incriminating articles on one side and the petitioner on the other. He has however denied the pressure by petitioner to depose as above. He also did not see the posters in the name of the petitioner on the jeep vehicle parked in the open site in the bungalow of Gundecha. The so called suspicion in the mind of Borse, according to the learned advocate for the respondent No. 1, is enough to establish the fact that the petitioner was in possession of those bottles. However when Borse has stated that he had no reliable evidence to establish this proximity, he did not name the petitioner as an accused in this prosecution.

32. The next witness Baban Bhangre at Exh. 280 claims to be the reporter of Sakal paper. He does not possess any identity card or paper. He however tendered two letters Exhs. 281 and 282 sent by the paper, to show that he works on behalf of Sakal. Bhangre has deposed that Bhausaheb Kadu Patil was the chief campaigner of the petitioner at Shrigonda. Prakash Bidwai and Jafar Pahan were his workers. Advocate Subhash Dange was also the worker of the petitioner. He reported the news about liquor in Sakal paper dated 14th June, 1991 at Exh. N. He gave the news and the same was published. He was also the panch to the seizure of bottles from the office of the petitioner. He had also given complaint in that behalf. He has stated that the premises from where the liquor bottles were found belonged to Gundecha but the same was not in possession of Gundecha. During his visits to Shani temple, he used to see Bhausaheb

Kadu moving in the jeep. He was in possession of those premises. He had visited that bungalow at the time of inauguration of the election campaign of the petitioner. Kadu, Advocate Dange Bhausaheb Jamadar, Pathan, Pachpute and Bidwai were present at that function. He has tendered four chits at Exhs. 283, 284, 285 and 286 bearing the signatures of Bidwai in favour of Niwrat Pote, Popat Pote and Mohan Pimple. According to him, these chits referred to the directions to these persons to deliver liquor bottles to various persons. He has also tendered Vakil Patra and other documents which, according to him, are signed by Subhash Dange and Bidwai. They are at Exhs. 287 and 291. He has stated that when he went on the spot, people were standing in queuing to receive liquor bottles. Naresh Deshmukh, Nandu Kadekar, Bhima Dandekar were present and they were seen receiving the liquor bottles. This was when he visited the spot on 7-5-1991. He had also likewise seen the posters bearing the name of the petitioner being displayed in that room and so the voters' list and also three barrels of diesel and one jar of petrol.

33. He had noted three jeep vehicles parked in that area and the posters of petitioner were pasted on them. He signed the panchanama at Exh. 278 about the seizure of liquor bottles along with other panch Ashok Bajirao Honrao. Liquor was in a small room of 5' x 5'. He has categorically stated that the liquor bottles were seized from the bungalow of Gundecha as seen in photographs Exhs. 271 to 275. The side room has roof of asbestos sheet and it has a door facing eastern side. According to this witness Bhang, the petitioner had two election offices; one in the house of Mehta and the other in the bungalow of Gundecha. Bidwai used to issue chits from election office and Advocate Dange from his house in regard to distribution of liquor bottles. He has stated that 4 to 5 workers had approached him and told him that the keys were given in possession of Bhausaheb Kadu and it is at their instance that Gundecha gave possession of that bungalow to Bhausaheb Kadu Patil.

34. Singh Inspector told another person, present there to bring the keys from Kadu Patil but that person came and told Singh that Kadu Patil could not be traced and that the keys were not available. The said room was locked when Bhang had gone to that room. The lock was broken open and the bottles in large number were seized and the panchanama for that purpose was recorded on Ota. In the cross examination, he has stated that on 1-6-1991 he had entered the S. T. Control room and had assaulted the S. T. staff member. He also snatched the telephone and told the officers that he would bring up their father (superior officer). He however denied that he did it under the influence of liquor but admits that he has been prosecuted for which charge sheet is at Exh. 292.

35. He denies that he does not stay at Shrigonda but believes that the conduct of leaders and the reporters during such period should be clean. He admits that distribution of liquor in election period is an offence. Likewise to receive liquor bottles

also amounts to an offence. He claims to have received the liquor bottle on 9-6-1991 but surprisingly enough, he did not lodge complaint with the police nor with the District Election Officer or for that purpose, to any other officer. He only gave the press report about distribution of liquor. But it would be clear that he has absolved himself from that report. He was not paying for the liquor bottles. He has stated that in the above chits, at Exh. 286, it is not specifically mentioned that the liquor bottles should be supplied. The chits are issued in his favour directing him to deliver liquor bottles. He claims that the chit at Exh. 286 bears the signature of Bidwai and Dange. They are cut out from other papers. Exhs 286 and 287 are the xerox copies. He denies that the signature slip at Exh. 286 is cut out from the remaining paper. He has produced those documents. He has also tendered the Vakil Patra signed by Dange but is unable to name the persons for whom the Vakil Patras were filed.

36. Now on detailed cross examination of this witness, it would be seen that the signatures on the offending chits do not at all tally with the so called admitted signatures of Bidwai and Dange. Several discrepancies are pointed out in slips at Exhs. 283 to 291. Bhang admits that the signature at Exh. 287 does not tally with the signature of Bidwai at Exhs. 284, 285 and 286. Several discrepancies in loops, hooks and other appearances of the signature have been pointed out. No detailed discussion is warranted when there is a clear admission by Bhang that the signatures are different from the admitted signatures. He has however denied the suggestion that the signatures at Exhs. 283 to 286 are forged signatures created only with a view to involve the petitioner in this offence. He admits that Babanrao Pachpute was not the chief election campaigner for the petitioner but was one of the canvassors. Bhausaheb Kadu is not the resident of Shrigonda town. He admits that Tukaram Darekar is the congress worker at Shrigonda. He is the secretary of Taluka Congress Committee. Tukaram Darekar had published pamphlet of this incident and wanted the pamphlet to be pasted on each polling booth. It was sent to each polling booth but Baban Pachpute denied this in paper Lokyug on 16-6-1991 at Exh. 293.

37. There was however no denial of the allegations made by Baban Pachpute that the incident was fabricated. Even Bhang himself did not issue any clarification report about the falsity of the claim of Pachpute and the truth of seizure of bottles from the office of the petitioner. He admits that Bidwai is the respectable businessman from Shrigonda. He has admitted that in the panchanama Exh. 278 there is no averment that Gundecha disclosed the name of Bhausaheb Kadu Patil as the person to whom premises were given on behalf of the petitioner. There is also no averment in the panchanama that P.S.I. Singh had deputed one person to bring the keys from Kadu Patil and that person came and told that keys were not available. In the re-examination, he has stated that in the incident of 1-6-1991, he had asked for the complaint book which was not given. He had, therefore, assaulted the S.T. officer incharge. He admits that he has been residing in the house of his

mother-in-law Parvatibai Madhavrao at Shrigonda but denies that he had no reason to stay at Shrigonda during this period.

38. The evidence of Bhange deserves to be condemned for several reasons. He claims to be the reporter of Sakal but does not hold any identity card. He is a person who receives the liquor bottles but does not complain to the police. He advocates that the conduct of the reporters must be exemplary. He also admits that the signatures of the chits are that of Dange and Bidwai but this is not the truth. He also adverted to several facts which do not find place in the panchanama. As indicated, there is no incriminating evidence brought by him to show that the petitioner was in occupation of those premises from where the numerous liquor bottles were seized. He does not challenge the publication of Babanrao Pachpute that this incident was false. On the other hand, he does not pay to receive the liquor bottles. Evidence of Bhange is, therefore, patently false and deserves no credence whatsoever in support of the respondent in his Recrimination Petition.

39. Ashok Bajirao Honrao at Exh. 297 is also the signatory to panchanama Ext. 278 as one of the panchas. He did not participate in election nor is the active worker of Congress. He has stated that Kadu Patil was the principal person canvassing for the petitioner. Petitioner had two election offices at Shrigonda; one in the house of Mehta and the other in the bungalow of Gundecha. He has stated that he was given four bottles of different sizes from Jeep No. MXZ 7114. He did not complain about those bottles to the police. He himself does not drink and threw away those bottles. This conduct was expected to end in Honrao going to the police and complaining about distribution of liquor by the workers of petitioner. The same is not done.

40. In the cross examination, he states that he became the active worker of Congress before three years. He has been believing Congress since the time he got the right to vote. His elder brother Murlidhar is the President of Shrigonda Taluka Congress Committee. His brother used to use his jeep vehicle No. MVB 3350. He admits that he has been prosecuted along with others for assaulting the complainant Moti Parvati Shinde and others for which offences under sections 147, 148, 149 r/w 33 and 504 I.P.C. have been registered. The charge sheet is at Exh. 297. This witness claims to be the reporter for the last 10 years for Kesari but holds identity card only for the year 1992. He does not possess any accreditation card. He has no other documentary evidence to show that he is working as a reporter for the last 10 years. He admits that distribution of liquor is an offence and that the same should not be committed during the election period. But curiously enough, he did not complain about distribution of liquor by petitioner and his workers to the police or the Election Officer. He admits that Prof. Darekar had issued pamphlet regarding this incident but this was challenged by Babanrao Pachpute in his press note.

41. He has denied the suggestion that the election campaign for the petitioner did not take place on 7-5-1991 at Shrigonda. He admits that the press

report at Exh. 299 for 8-5-1991 is correct. Although the date of the function is reported as 6-5-1991, he states that the function took place on 7-5-1991. He was referred to Sarwamat dated 7-5-1991 about the date of this function. He did not come across any invitation wherein this date 6-5-1991 was changed to 7-5-1991. This evidence would show that the function did not take place on 7-5-1991 as canvassed by this witness. He has admitted that he is the Proprietor of Jyoti Advertising Service and that he has been getting work from Shrigonda Sugar Factory, of which Shivajirao Nagode—the known Congress worker—is the founder.

42. His brother Murlidhar was elected as the President after this election of 1991 and this would go a long way to show that he is bound to disposed towards congress and obviously respondent No. 1. He is benefitted by this attitude in his business of Jyoti Advertising Services. He does not care to report to the police about the bottles being foisted on him by the petitioner or his workers. No denial was issued to the report of Babanrao Pachpute about the falsity of this incident and hence it can be safely concluded that Honrao does not pose himself as an uninterested witness to establish the story of involvement of the petitioner.

43. The next witness Tukaram Darekar is at Exh. 302 and has stated that during the search of jeep and election office of Gundecha bungalow, liquor bottles were seized and he was the panch. Laxman Bodke was the other panch. About 36 big size bottles and 93 small size bottles containing liquor were found from the jeep No. MXZ 7114 in possession of Vithoba Chavan. From the adjoining room, 11 big size bottles and 30 small size bottles were also found beneath the kitchen platform and these bottles were seized under panchanama at Exh. 303. The posters and pamphlets in the name of the petitioner were found in that room and all these articles were seized. It would be seen that the panchanama does not refer to voters' list, posters etc. He has stated that Prakash Chavan stated that he was engaged as driver by the petitioner for distribution of liquor. The bottles had to be delivered to Parle Patil and Zende Patil. He was told by Bhausahab Kadu to deliver those bottles to the above persons. Darekar states that he had received the information that large number of bottles were stored in the room which was locked.

44. In the cross examination, he has stated that the posters and pamphlets were not seized under the panchanama. He himself is the General Secretary of Taluka Congress Committee. He has been with Shri Sharad Pawar who established Samantar Congress and later on joined Congress (I). This witness also contested the election of Sugar Factory from Nagode panel, in 1992. In 1984 he had contested from the panel of Babanrao Pachpute, the Finance Minister of Maharashtra at the relevant time. Babanrao Pachpute was the member of Janata Dal in 1984. This witness was the Vice Chairman of the Board of Sugar Factory but he tendered his resignation and filed the writ petition alleging that his signature was obtained by force and fraud, but the said writ petition was dismissed and this would,

therefore, show that Darekar can go to the extent of making an allegation that he was forcibly required to sign but the Court did not accept that contention as true. Darekar himself did not lodge complaint to the police or with the Election Officer about the incriminating articles found in possession of the petitioner and his workers during the period of election. On the other hand, he was canvassing for the respondent No. 1 at that time. They had published pamphlets of liquor story and directed fixing of these pamphlets on the polling booths. But he is unable to say whether they were pasted on polling booths.

45. He had insisted on the police to attach posters from the room but the police did not do so under the pretext that those posters had no bearing on the seizure of liquor bottles, which is an offence under the Prohibition Act. In the panchnama, there is no reference to the statement of Prakash Vithoba Chavan telling them that he was engaged by petitioner for distribution of liquor. He has been shown photograph Exh. 304 about Shrigonda meeting addressed by Shri Sharad Pawar. This witness is found in the company of respondent No. 1 Shivajirao Nagode, Baba Bhos, Jijabai Shinde and others. Even Ramnath Wagh was also on the stage. The microphone used in that meeting appears to have the name of Mehta of Shrigonda and this photograph would add to the arguments on behalf of the petitioner that this witness is a biased witness belonging to the Congress. He did not choose to make complaint to police or the Election Commissioner about involvement of petitioner in distribution of the liquor bottles. On the other hand, he actively associated himself with respondent No. 1 in the election campaign. I, therefore, feel that the evidence of Darekar is that of an interested witness. His conduct soon after the seizure of bottles does not reflect upon his anxiety as a reporter to take the matter to the Election Officer and hence his statement cannot clinch the allegations in the Recrimination Petition.

46. The other witness Laxman Bodke at Exh. 305 is the panch to the seizure of liquor bottles from the jeep and the election office of the petitioner. He has been prosecuted for misbehaving under the influence of liquor on 24-5-1991 for which the charge sheet is at Exh. 306. He has been involved in defalcation of about Rs. 2,500 from the Navjeevan Nagari Sahakari Patpedhi. He has admitted this misappropriation. He is also the usual police panch according to the petitioner, because he is the panch in about three police cases. He claims to be the reporter of Saptahik Bhadrakanya Jwala in the year 1989 but since then he is no longer the reporter. He did not inform the police about distribution of liquor by the petitioner and his workers although he knew that it was a crime. He did not even care to inform the Election Officer i.e. Collector in that behalf. He has deposed about this incident for the first time in the Court.

47. In the printed invitation at Exh. 308, published by the Congress workers in regard to the respondent No. 1, there is incorporated his name in that list. He has also stated that the posters and banners in the name of the petitioner were not seized from those premises. Although he has stated before

the police that the jeep had boards of the petitioner fixed on it, police did not record this fact. All these statements would bring down the credibility of this witness. He has been involved in defalcation and he has admitted to that effect. He is a panch in police cases. He did not care to report about the distribution of liquor to the police although he was a reporter on one newspaper.

48. Witness Sultan Tade at Exh. 308-A claims to run the inn (hotel) at Shrigonda and he has stated that the election office of the petitioner was situated in the bungalow of Gundecha. He used to see the workers of the petitioner removing posters, banners etc. On 9th June, 1991 the stock of liquor bottles was distributed on the basis of chits. He saw about 10 to 12 persons receiving liquor bottles. Kadu Patil gave him five cartons containing liquor bottles and told him that his workers taking food in his hotel should be supplied those bottles on 10-6-1991. He went along with the tiffin boxes to the house of Gundecha and Kadu Patil enquired of him as to whether he had adequate stock of liquor bottles. Kadu Patil gave him two more bottles for his personal consumption. His total bill for providing food amounted to Rs. 14,000, in regard to the food supplied to the workers of the petitioner.

49. He has stated that the election office of respondent No. 1 is nearer to his hotel. He does not have any document to show that he received Rs. 14,000 from Kadu Patil on behalf of the petitioner. He also does not have any document to show that the workers of the petitioner used to take food at his hotel and in this background, the evidence of Sultan Tade can not be accepted in support of the allegations in Recrimination Petition. His attempt to establish nexus with the workers of the petitioner falls to the ground when he has not been able to tender even the total of documentary evidence to show that he had received Rs. 14,000 from Kadu Patil for the food supplied to the workers of the petitioner. It would be hazardous to rely on such evidence to establish the charge of corrupt practice which almost orders on the criminal charge for which evidence has to be led to establish the corrupt practice beyond reasonable doubt.

50. It would not be proper to part with this question without examining the evidence of the petitioner-respondent No. 1 and the witnesses examined by the respondent No. 1 in reply to the main election petition. The petitioner in his deposition at Exh. 15 in para 23 has stated that he did not carry out the assassination of personal character and conduct of respondent No. 1 and further that he had never taken the premises of Raj Kumar Gundecha for the purposes of his election office. He stoutly denied that he had ever hired the jeep No. MXZ 7114 for distribution of liquor bottles and that Bhausaheb Chandrabhan Kadu was never his agent. He did not know other persons referred by respondent No. 1 in his Recrimination Petition. In the cross examination, he has maintained the same stand and stated that he had taken the bungalow of Mehta for the purpose of his election office and not that of Gundecha. He has stoutly denied that there were

liquor bottles in his election office at Shrigonda and further that he had directed Chaven to distribute the bottles at various places.

51. Regarding Dange and Bidwai, he has stated that Dange worked for him but Dange was never asked to distribute the liquor bottles. He has admitted the photographs Exhs. 43, 46, 191 and 194 but has denied that the photographs Exhs. 44 and 45 and photographs Exhs. 271 to 275, 192 and 193 referred to the house of Gundecha, from where the incriminating liquor bottles were found. As indicated, the election office of the petitioner was situated in the house of Mehta which is a two storied house whereas the premises from where the liquor bottles were found was a single storied structure as can be clearly seen from the photograph Exh. 271. Incidentally, it may be stated that all these photographs have not been disputed by the parties. On the other hand, they heavily relied on these photographs to establish the respective claims about the non-involvement of the petitioner on one side and the involvement of the petitioner on the other.

52. As against this, in the evidence of respondent No. 1, he has stated that bottles were found from the premises at Exh. 43. However, in the re-examination, respondent No. 1 has definitely stated that the liquor bottles were found from the place shown in Exh. 44, which admittedly is not the house of Gundecha. This would, therefore, conclude one important fact that the respondent No. 1 himself is not very sure as to from where the liquor bottles were found and even if he is said to have pointed to any place, the same place is not the bungalow of Mehta.

53. Respondent's witness No. 4 Raghunath Babasaheb Shirke has stated that the liquor bottles were found from the jeep as well as the place shown in photographs Exhs. 191, 192, 193 and 194. As stated, Exhs. 191 and 194 are the places where the election office of the petitioner was located in the house of Mehta whereas photographs Exhs. 192 and 193 are the places which related to the single storied house and not the double storied house and that would show the confusion in the mind of D.W. 4 Shirke at Exh. 188. He is unable to say as to whether the house shown in Exhs. 191 and 194 belongs to Raichand Budhmal Mehta. He is also not definite as to the places from where the liquor bottles were seized. He is involved in some criminal offences like riot etc. Suffice it to say at this stage that Shirke can not advance the cause of the respondent No. 1 in support of the Recrimination Petition. Raghunath Shirke hails from Bamburdi village in Shrigonda taluka. Shirke's evidence is discussed in detail in the election petition and he is held to be not reliable.

54. D.W. No. 6 Bhayyasaheb Deshmukh is of Kukana, Tq. Newasa and he refers to distribution of liquor in Harijan Wada, Chambhar Zopadpatti at his place. But as the Recrimination Petition does not relate these places, the evidence of Bhayyasaheb Deshmukh can not be taken into consideration. He is also held to be not reliable in the election petition.

55. The last witness D.W. 8 Rajendra Shivaji Gaikwad at Exh. 252 is from village Chimane, Tq. Shrigonda. He also deposed to the fact that the

photographs Exhs. 191 and 194 depicted the bungalow of Gundecha. There is a poster of election office of the petitioner on these premises. He evidently belonged to Shivajirao Nagode group which, as discussed above, is a congress group. In his cross examination, he has stated that he is unable to say as to what type of shop is run in the house of Gundecha and that the building where possibly the shop is located might be of Raichand Budhmal Mehta. He did not see the place about which the panchanama was drawn by police. The uncertainty seen in the evidence of this witness would certainly undermine the case of the respondent No. 1 in relation to the allegations contained in the Recrimination Petition.

56. In A.I.R. 1984 S.C. 89 in the case of Surendrasingh V/s. Hardayalsingh, the Supreme Court, on detailed analysis of the previous cases, has observed as follows :—

"It is thus clear beyond any doubt that for about 20 years, the position has been uniformly accepted that the charges of corrupt practice are to be equated with the criminal charges and proof thereof would not be preponderance of probabilities as in civil action to prove beyond reasonable doubt as in criminal trial."

The decision of the Larger Bench in Mohansing's case reported in A.I.R. 1964 S.C. 1366 being the decision of co-ordinate Bench, is not parted with. The Supreme Court refused to take fresh look on this ratio.

57. Viewed in this background, it would be manifestly clear that the evidence led on behalf of the respondent No. 1 in Recrimination Petition does not come upto the standard of proof laid down in Surendrasingh's case (supra). It will have, therefore, to be held that on the question of Recrimination Petition, respondent No. 1 in Election Petition, has not proved beyond any reasonable doubt the charges levelled by him against the petitioner about the personal character and conduct in the meeting at Shrigonda on 7-5-1991. His further character assassination in pamphlet Exh. 49 and petitioner's involvement in distribution of liquor bottles found from the premises at Shrigonda on 12-6-1991 are also not proved.

58. Looking to the evidence in the Recrimination Petition, I feel that no charges of guilt are brought home against the Election Petitioner. Taking into consideration the magnitude of the evidence, respondent No. 1 (Petitioner of Recrimination Petition) Yeshwantrao Gadakh must be saddled with costs of Rs. 10,000 to be paid to the petitioner Vikhe Patil. Accordingly, I pass the following order.

ORDER

Recrimination Petition is dismissed with costs. The petitioner-respondent No. 1 Yeshwantrao Gadakh shall pay the costs of Rs. 10,000 to the respondent-petitioner Vikhe Patil. Security deposit should be adjusted towards payment of costs.

March 30, 1993.

